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COLLECTIONS

AND

OBSERVATIONS

Concerning the WORSHIP, DISCIPLINE, and GOVERNMENT of the CHURCH of SCOTLAND.

In four BOOKS.

By WALTER STEUART of PARDOVAN.

Unto which are added,

The Form of Proceſs in the Judicatures of the Church, with Relation to Scandals and Cenſures;

AND,

The Second Book of Diſcipline; or, Heads and Concluſions of the Policy of the Kirk, approved of by Act of Aſſembly 1581:

ALSO,

A Chapter of a celebrated Treatiſe, concerning the Cauſes of the preſent Corruption of Chriſtians, and the Remedies thereof. By the Reverend Profeſſor Oſtervald at Neufchatel in Switzerland.

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M, DCC, LXX.

PREFACE.

IT was the happineſs of Scotland, very early, perhaps as early as the apoſtolic age, to receive the light of the glorious goſpel: and although, as was the caſe with the reſt of the Chriſtian world, this light came to be greatly obſcured, by the ambitious incroachments of the church of Rome; yet it is evident, that in Scotland it was never entirely extinguiſhed. For, in ſome of the remoter parts of our country, in ſome of thoſe very iſlands which we are now apt to conſider as the ſeats of ignorance and barbarity, lived a people, remarkable for ſimplicity of manners, purity of behaviour, and unaffected piety towards God. Theſe never ſubmitted to the uſurpations of the Papal tyranny; and theſe were "the little leaven which afterwards leavened the whole lump." Of their number, a Columbus and a Kentigern were famous in the fifth century, and a Clemens and Sampſon, in the ſeventh.

And even in the tenth age, when the darkneſs of corruption and error had greatly increaſed, we are told, there were ſome godly men in Scotland, who taught the true doctrine of Chriſt's atonement, and continued to exerciſe their functions apart by themſelves, without acknowledging the authority of thoſe who aſſumed a ſpiritual power over God's heritage. But it was not till about 400 years after this, that any thing of a general reformation began to appear. Then "indeed waters broke forth in our wilderneſs, "and ſtreams in our deſert." Nor was all the cruelty of bigotted zeal able to deſtroy this heavenly plant; but, watered by the blood of a Reſby, a Hamilton, and a Wiſhart, it grew ſtronger and ſtronger, till thouſands flocked to its refreſhing ſhade, and took ſhelter under its branches.

To ſupport and animate theſe, and carry on the glorious work ſo happily begun, providence raiſed up a man of apoſtolic piety and reſolution, whoſe zeal awakened the attention, and whoſe prudence conducted the zeal of his countrymen, in ſhaking off the Romiſh yoke. Every one will immediately perceive, that I ſpeak of the famous John Knox, that great inſtrument of our reformation, whoſe name will be precious to lateſt ages.

The civil diſſenſions which then prevailed in the country, did not a little befriend the reformation. And the bold attempt of the Popiſh clergy to get the whole power into their own hands, on the death of James V. opened the eyes of many who till then had

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remained inſenſible; while the hope of enriching themſelves with the revenues of the church, made others ready to join in aboliſhing Popery. And thus, from different principles, a barrier was formed in defence of the reformation, which all the fraud and cruelty of the Queen-Regent, or the addreſs and deſtructive charms of her unfortunate daughter, were never able to overturn. Nay, thoſe very meaſures which they took for cruſhing the Proteſtant intereſt, by the tender mercies of our God, proved the means of eſtabliſhing it, and haſtened the overthrow of the Papal power in this country. So that, in 1560, the eſſential doctrines of genuine Chriſtianity were publicly acknowledged by the ſtates of the kingdom, and the corruptions of the church of Rome condemned.

Hitherto the ſtruggle principally had been about the doctrines of religion, as of the firſt and greateſt importance; but theſe being now in ſome meaſure ſecured, our reformers turned their attention to the government of the church, which, under the Papacy, had become a ſyſtem of worldly power and intereſt, and, inſtead of promoting religion, tended to excite and ſtrengthen ſome of the worſt paſſions in the human mind.

A plan for the worſhip and government of the church was accordingly drawn up, not merely in conformity to the church at Geneva, as one of our modern hiſtorians aſſerted; but ſuch a plan as to our pious anceſtors appeared moſt agreeable to the mind of God in ſcripture, and the practice of the primitive church.

It is true, this plan was widely different from that of the church of Rome. In it there was nothing to gratify ambition or avarice; but an amiable, a grand ſimplicity runs through the whole; ſuch as ſuited the worſhip of the humble Jeſus, and the nature of that kingdom which is not of this world.

But although our reformers thus freely gave up with all in the Romiſh church which could pleaſe a ſenſual mind, it was no part of their opinion, that the worſhip of God ſhould be mean and grovelling, or the miniſters of religion be rendered incapable of diſcharging the duties of their functions, by poverty, or depend upon the changeable humours of people for their ſubſiſtence. Though they gave up with all views of living in affluence upon the revenues of the church, and did not look upon theſe as the property of the clergy; yet did they eſteem them a fund ſacred to religious purpoſes, to be employed in ſupporting the clergy with decency, maintaining the poor, and educating the youth of the nation.

So that Knox, and the other leading inſtruments of the reformation, were very far from encouraging that diſſipation of church-revenues

revenues which afterwards took place. Nor were they the perſons, whatever has been alledged, who were for demoliſhing the very fabrics of the churches, and all that was decent and cleanly in the places of public worſhip. No: the firſt was often done in direct oppoſition to their warmeſt remonſtrances, by the lower claſs of people, who had long groaned under the oppreſſive tyranny of the monks and Popiſh clergy; while thoſe of higher rank, who had the revenues of the church in their hand, could ſcarce be prevailed upon to employ them in a way which would prevent the other.

But although this form of worſhip and government was embraced by the friends of the reformation in Scotland, and practiſed by them, ſo far as their ſituation would allow; yet it was not till the year 1592, that it received the ſanction of civil authority, and became the national order. And even when the Preſbyterian church ſeemed thus eſtabliſhed, her tranquillity was but of ſhort duration: for there remained in the country a ſtrong party, who, either retaining a ſecret regard to Popery, or thinking it prudent to recede as little as poſſible from the old practice, were for adopting that form of church-government which had been eſtabliſhed in England. The people of this perſuaſion continued with great keenneſs to oppoſe Preſbytery: and though they could not, for ſome time, procure an abſolute repeal of the laws in its favour; yet, by repeated innovations, they gradually deſtroyed their effect, till at laſt they got a kind of mixed Epiſcopacy ſubſtituted in its place, which continued to be the form of the church in this country till the breaking out of the civil wars.

The true Preſbyterians, ſtill very numerous in Scotland, having now appeared with their uſual zeal in ſupport of civil liberty, were well intitled to the countenance of the parliament; whereas the friends of the hierarchy, both in Scotland and England, had rendered themſelves and their opinions obnoxious, by ſupporting the crown in thoſe arbitrary and unconſtitutional meaſures which firſt inflamed the nation. This occaſioned the calling together that aſſembly of divines, which, about the 1648, met at Weſtminſter: An aſſembly which, whether we conſider the number, learning, or piety, of the perſons who compoſed it, may well be compared with the ancient councils. This venerable body, after a long and candid examination, agreed to the ſcheme of doctrines, and the form of worſhip and government, contained in their confeſſion of faith and directory, which is, in ſubſtance, the ſame with what had been eſtabliſhed in the beginning of the reformation. This

confeſſion

confeſſion and directory was ſoon after received by the church of Scotland; which had now recovered ſomething of its former power, and continued, if not to flouriſh, at leaſt to exiſt, till the Reſtoration; when the King, forgetting all the promiſes made during his afflictions, and the ſervices done him by the Scots Preſbyterians, aboliſhed their government, and permitted a moſt cruel perſecution to be carried on againſt them; becauſe they would not abjure all their known principles, conform to the Epiſcopal government, and acknowledge him head of the church. This perſecution in Scotland continued during the whole reign of Charles II. and King James his brother, whoſe open attachment to Popery, and purſuit of arbitrary meaſures, at laſt awakened the zeal of the nation, and produced that ever-memorable revolution in 1688, which, as Voltaire elegantly expreſſes it, may well be called the *Æra of Britiſh liberty*. The happy conſequences of this change the Preſbyterians in Scotland immediately felt, not only in reſpect of civil property, but alſo in the full eſtabliſhment of that worſhip and government in the church, to which they had diſcovered a moſt ſteady attachment during a cruel perſecution of eight and twenty years.

Let me now adduce a few teſtimonies for the church of Scotland, which may be found in a little book, intitled, *The Government and Order of the Church of Scotland*, printed at Edinburgh *in anno* 1641, and reprinted there by the ſociety of ſtationers, for George Moſſman *in anno* 1690. I wiſh every miniſter in Scotland had one of them. It was done by the pains of a generous Engliſh gentleman, who was very inquiſitive into the order and conſtitution of our Church, who tells he was ſtrongly drawn to the liking of this church, by the teſtimonies given to the reformation thereof by ſome moſt famous witneſſes which he relates.

The *firſt* is, of that worthy Scots martyr Mr George Wiſhart. "This realm ſhall be illuminated with the light of Chriſt's goſpel, "as clearly as ever was a realm ſince the days of the apoſtles. "The houſe of God ſhall be builded in it, yea it ſhall not lack, "whatſoever the enemy imagine to the contrary; the very top-"ſtone, the glory of God ſhall evidently appear, and ſhall once "triumph in deſpite of Satan: But alas, if the people ſhall be af-"ter unthankful, then fearful and terrible ſhall the plagues be "that after ſhall follow." *Hiſt. of the Church of Scotland*, p. 108.

The *ſecond* is, of Beza, after he had viſited Scotland, writing to John Knox, epiſt. 79. "This is a great gift of God, that you "have brought into Scotland together, pure religion and good or-

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" der, which is the bond to hold fast the doctrine. I heartily " pray and beseech for God's sake, hold fast these two together, " so that you may remember that if one be lost, the other cannot " long remain. As bishops brought forth Popery, so false bishops, " the relicts of Popery, shall bring in to the world Epicurism. " Whosoever would have the church safe, let them beware of this " pest. And seeing you have timely dispatched it in Scotland, I " beseech you never admit it again, albeit it flatter with shew of " the preservation of unity, which hath deceived many of the " best of the ancients.

The *third* is, of the body of the confession of faith, p. 6. " It " is the rare privilege of the Church of Scotland before many, in " which respect her name is famous, even among strangers, that " about the space of fifty-four years, without schism, let be heresy, " she hath kept and holden fast unity, with purity of doctrine. " The greatest help of this unity through the mercy of God, was, " that with the doctrine, the discipline of Christ and the apostles, " as it is prescribed in the word of God, was by little and little " together received; and according to that discipline so near as " might be, the whole government of the church is disposed: By " this means all the seeds of schisms and errors, so soon as they be- " gin to bud, and shew themselves in the very breeding and birth, " were smothered and rooted out. The Lord God out of his in- " finite goodness grant unto the king's most gracious Majesty, " to all the rulers of the church, to the powers that are the nur- " sers of the church, that according to the word of God, they " may keep perpetually that unity and purity of doctrine."

The *fourth* is, of King James VI. (*Basil. Dor. to the reader.*) " The religion professed in this country, wherein I was brought " up, and ever made profession of, and wishes my son ever to con- " tinue in the same, as the only true form of God's worship, *&c.* " I do equally love and honour the learned and grave men of ei- " ther of these opinions, that like better of the single form of po- " licy in our church, than of the many ceremonies of the church " of England, *&c.* I exhort my son to be beneficial to the good " men of the ministry, praising God that there is presently a suf- " ficient number of good men of them in this kingdom, and yet " are they all known to be against the form of the English Church." And in the assembly 1590, his Majesty praised God, " for that he " was born to be a king in the sincerest church in the world, where " religion was most soundly and sincerely professed." Before his Majesty went to England, it has been oft heard what was his ver-

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dict of the Engliſh ſervice. As alſo when he was ſettled in England, what was his anſwer to the Biſhop of Bath, when he inquired how it came to paſs, that there were not errors and hereſies in the church of Scotland wherewith their church was plagued? He ſaid, "The order and government of that church, was ſuch "as guarded againſt all theſe; for ſo ſoon as any error appear- "ed, the kirk-ſeſſion took notice of it; if it was too hard for "them, it came to the preſbytery, and from that to the ſynod, "and at laſt to the general aſſembly, and nothing could eſcape "them."

The *fifth* is, Brightman, our own countryman, joineth the churches of Helvetia, Swevia, Geneva, France, Holland, and Scotland, all together into one church, for the counter-pain of the church of Philadelphia. "Becauſe" ſaith he, "they al- "moſt live by one and the ſame laws and manner of government, "as touching any matter of moment; neither doth the diſtance "of place break off that ſociety, which the conjoining of mind "and good-will coupleth together." Having thus joined them into one church, he ſubjoineth concerning it: "Loath would I be "to provoke any man to envy, or to grieve him with my words; "yet this I muſt ſay, there is no place where the doctrine found- "eth more purely, the worſhip of God is exerciſed more uncor- "ruptly, where more faithful diligence of the paſtors doth flou- "riſh, or more free and willing obedience is given by the people, "nor yet where there is greater reverencing of the whole religion "among all orders." And afterwards ſaith, "Neither doth it "only keep the doctrine of ſalvation free from corruption: but it "doth alſo both deliver in writing, and the exerciſe in practice "that ſincere manner of government, whereby men are made "partakers of ſalvation." This in his *Commentary on the Revelation*, iii. 7.

To theſe may be added, what upon the one hand is ſaid by theſe of the ſeparation in their firſt petition to King James, inſert in their apology to the doctors of Oxford. "We are willing and "ready to ſubſcribe to theſe grounds of religion publiſhed in the "confeſſion of faith, made by the church of Scotland, hoping in "the unity of the ſame faith to be ſaved by Jeſus Chriſt, being alſo "like minded for, and with other reformed churches in points of "greateſt moment."

And upon the other hand, that the meeting of miniſters for interpreting ſcripture, like unto their preſbyteries, were allowed by Arundel, Hutton, and Matthew, three archbiſhops in England, and

and proved very profitable in the northern parts for increaſe of knowledge both in miniſters and people.

But all theſe, ſaith that gentleman, and the like teſtimonies, were to me but like the ſaying of the woman of Samaria to her countrymen, till I did more fully underſtand the conſtitution and order of that church; then did I believe, not becauſe of their teſtimonies, but becauſe I did ſee and know, and from that which I have ſeen and do now know. "When I have walked and gone round "about that church, when I have told the towers thereof, mark-"ed well her bulwarks, and conſidered her palaces," I may without offence affirm three things.

1. "That God hath not dealt ſo with every nation." If envy would permit, I might ſay, *any nation*, as he hath dealt with them, whereof no cauſe can be given but his own good pleaſure. He ſheweth mercy and maketh the ſun to ſhine on whom and where he will, and of him, and through him, and for him, are all things.

2. It is no wonder though that nation ſtand to the defence of their reformation: Had the Lord been pleaſed to bleſs us with the like at the time of our reformation, we would not have been ſo unwiſe as to make exchange of it with Prelacy; we would have forſaken all things rather than to have forſaken it. It is more ſtrange that any ſhould have been found amongſt them at any time, to ſpeak or do againſt their own church. For, ſaith Cicero, *offic. l.* 1. "But after you have with your reaſon and mind, made a general "ſurvey of all ſocieties, there is none more grave, more dear than "that which each one of us hath with this country; parents are "dear, children, friends, familiars, are dear: But our native "country alone taketh all theſe within their compaſs: for which "what good man will doubt to die, could his death ſerve her "for good. So much the more deteſtable is their barbarity, who "hath with all kind of wickedneſs rent aſunder their native "country, and both are and have been exerciſed in overturn-"ing her from the very foundation." If a patriot ſpeak ſo of his country, a citizen ſo of his republic, what ſhould the Chriſtian, born, baptiſed, and bred in Scotland, think and ſay, if he has been born there, not only to this mortal, but to that immortal and everlaſting life. No children on earth have better reaſon to ſay, *We are not aſhamed of our mother*, and it were to be wiſhed that the ſaying were reciprocally true.

3. Having the pattern of all the reformed churches before us, and this example ſo near unto us, what need we to ſtand amazed, as not knowing what to chuſe? To abide that which we have

been, is neither profitable nor poſſible; to conjoin the two in one, is but the mixture of iron and clay, and muſt needs make the diſtemper greater. It were well for us, and no other thing well for us can I ſee, that laying aſide our high conceit of ourſelves, and the low eſteem of other reformed churches, we would reſolve to follow them as they follow Chriſt, and not to deſpiſe the government of Chriſt, becauſe they ſeem to be but mole-hills: but to conform to them becauſe they are conformed to Chriſt, *and to the pattern ſhewed in the mount.*

Such is the high eſteem in which our excellent eccleſiaſtic conſtitution has been held by the moſt eminent perſons of different ranks, both at home and abroad: And as the following collections (wherein the fulleſt view of its tendency to promote the great ends of religion in the ſpiritual and eternal welfare of thoſe who ſhall embrace it, is exhibited, that ever has been publiſhed,) are now become ſo ſcarce, that a copy of them has been with difficulty procured for many years, the publiſher judged a new edition of them would be no unacceptable ſervice to the public.

PRE-

PREFACE

To Pardovan's Collections.

IT was matter of regret, especially about the beginning of our happy Revolution in the year 1689, that the judicatures of this church, very much wanted fixed and established rules, for directing their proceedings; or, though they had them, yet they lay so scattered and hid, that intrants to the holy ministry, and the younger pastors, yea even some among the more aged of that sacred order, were too much strangers to them. The consideration whereof, did chiefly move me to set about this work: And if my endeavours herein, may but a little contribute to the benefit or service of the office-bearers and guides of this church, it is a reward greater than I deserve. And till a better compend be composed, these collections are humbly offered, to be recommended by professors to their students: For, except this subject be studied and understood by ministers and elders, their memories may well be burdened with their duty, but their judgements, till then, shall still remain ignorant and unsatisfied about it.

Now, as for those of our neighbour churches in this and the other island, who now differ from us, I hereby present them with that form of the house of God in Scotland, with which their pious, wise, and learned predecessors did once so passionately desire uniformity. So that whenever it shall please our great and good God to animate their successors with the like spirit, they may fall about building conform to this pattern. Not that I propose this work as the deed of the Church of Scotland, or of any judicatory therein; only in so far as what is collected or observed in it, shall be found supported by their acts or universal customs.

The materials of these collections, and in particular, of what is said on that title concerning parochial visitations by presbyteries, were chiefly gathered from, and lay scattered among the old and late manuscript and printed acts of general assemblies; The overtures concerning discipline, transmitted by them to presbyteries, the directory for worship and church-government, and the constitutions of some other churches have been helpful to the completing of the composure. Besides, I thought it not improper to add, here and there, some hints of civil laws, which I hope the reader will not find unuseful or impertinent, seeing there are some cir-

cumſtances concerning the worſhip of God, and the government of his church, common to human actions and ſocieties, which are to be ordered by the light of nature and Chriſtian prudence, according to the general rules of the word.

I have divided theſe collections into four books. The *firſt* treats of church-government, which principally concerns her office-bearers and judicatures. The *ſecond* is concerning the worſhip of God and ſacred things, with what relates to the maintenance thereof. The *third* and *fourth* books treat of church-diſcipline; the one concerning errors and ſcandals; and the other about the method of reclaiming and cenſuring the erroneous and ſcandalous.

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COL-

COLLECTIONS AND OBSERVATIONS Methodized, &c.

BOOK I.

TITLE I.

Of the Election and Ordination of Paſtors.

§ 1. OUR Lord Jeſus Chriſt hath inſtituted a government and governors eccleſiaſtical in his houſe, with power to meet for the order and government thereof: and to that purpoſe the Apoſtles did immediately receive the keys from the hands of their Lord and Maſter Jeſus Chriſt, who hath, from time to time, furniſhed ſome in his church, with gifts for government, and with commiſſion to exerciſe it when called thereunto. And it is alſo agreeable to, and warranted by the word of God, that ſome others, beſides thoſe who labour in the word and doctrine, be church-governors, to join with the miniſters of the word, in the government of the church, and exerciſe of diſcipline: which office-bearers, reformed churches do commonly call *Ruling Elders*. It is likewiſe agreeable to the ſame word, that the church be governed by ſeveral ſorts of judicatures, ſuch as, kirk-ſeſſions, preſbyteries, provincial and general aſſemblies; all which have power, one in ſubordination to the other, to call before them any perſons within their own bounds, whom

The intrinſical power of the church, the divine warrant and power of her judicatures, paſtors, and elders, aſſerted.

whom the eccleſiaſtical buſineſs, which is before them, doth concern, either as party or witneſs; ſee cap. 1. act 11. aſſem. 1707 The church of Scotland, by this article, denies the independency of preſbyteries and provincial ſynods, as much as they do the independency of a ſingle congregation. But till the churches become all of one mind in the Lord, and civil rulers become her nurſing fathers, in their ſeveral independent kingdoms and governments, it would ſeem, till theſe good days come, the churches are to manage their own affairs independently upon each other; not that this independency proceeds either from ſcripture, or the nature of the church, but from reſtraint and miſunderſtandings. See the laſt title of this book.

The various names given to paſtors, and why. Titles of dignity in the church favour of Popery.

§ 2. Paſtors, biſhops, and miniſters, are they who are appointed to particular congregations: in reſpect whereof, ſometimes they are called paſtors, becauſe they feed their congregations; ſometimes biſhops, becauſe they watch over their flocks; ſometimes miniſters, becauſe of their ſervice; ſometimes alſo preſbyters or ſeniors, for the gravity of manners which they ought and are ſuppoſed to have. See Polity of the Kirk, cap. 4 By the act of Aſſembly, December 17. 1638, art. 19. ſeeing the office of dioceſan or lordly biſhop is removed and abjured by this kirk, it is thought fit that all titles of dignity, favouring more of Popery than of Chriſtian liberty. as chapters, with their elections and conſecrations, abbots, priors, deans, archdeacons, preaching deacons, chanters, ſub-chanters, and others, having the like title, be no more uſed hereafter, under pain of church-cenſure.

Intimation for the electors to meet, is made by the preſbytery, but ordinarily upon their application. A few applying, ſtops the *jus devolutum*.

§ 3. When the preſbytery are well informed that a pariſh, for the moſt part, is unanimous to elect a fit perſon to be their paſtor, then they are to appoint one of their number to preach on a Lord's day in the vacant congregation, and, after forenoon's ſermon, to intimate, that elders, heritors, magiſtrates, and town-council, (when that vacancy happens in a burgh royal), and heads of families, do meet at the church on ſuch a week day, (being always ten free days after the intimation), in order to the electing of a fit perſon to ſupply their vacancy. Which order ſeemeth moſt agreeable to that apoſtolical practice, Acts vi 3. "Wherefore, brethren, look ye out among you ſeven "men

" men of honeſt report, full of the Holy Ghoſt, and " wiſdom, whom we may appoint over this buſineſs." And the preſbytery, for ordinary, waits till the electors apply to them for that intimation; which application will ſtop and interrupt the *jus devolutum*, (of which hereafter), although it be made by a few electors, becauſe their meeting to apply hath no convener

Who are habile electors, who not; and what makes a call legal.

§ 4. By the act of Aſſembly Auguſt 4. 1649, the kirk-ſeſſion is to meet and proceed to the election, and it doth moſt properly belong to them, as the repreſentatives of that congregation, to look out for a fit perſon to be their paſtor. But ſeeing the heritors (eſpecially ſuch as reſide in the pariſh) and magiſtrates, with their town-council, in burghs, are the moſt laſting, as well as the moſt conſiderable heads of families, on whoſe ſatisfaction and aſſiſtance the comfortable living of miniſters may much depend, the 33d act, ſeſſ. 2. of King William and Queen Mary's parliament hath joined them (being Proteſtants) with the elders, in ſubſcribing of calls to miniſters. It is to be minded, that both ſeſſion and town-council do ſubſcribe perſonally as the heritors do. By the above-mentioned act of Aſſembly, no perſon, under the cenſure of the kirk, is to be admitted to vote in the election of a miniſter. By the 6th act of the 4th ſeſſion of King William and Queen Mary's parliament, all perſons whoſoever, giving voice in calling of miniſters, are, at their meeting appointed for that effect, to ſwear the oath of allegiance, and ſubſcribe the ſame, with the aſſurance.

When a preſbytery may plant a vacancy *tanquam jure devoluto*.

§ 5. By that ſame laſt-mentioned act of parliament, it is enacted, That if application be not made by the elders and heritors of the pariſh, to the preſbytery, for the call and choice of a miniſter, within the ſpace of ſix months after the vacancy, that then the preſbytery may proceed to plant a miniſter *tanquam jure devoluto*. See § 3. *ſub finem*. And that forecited act of Aſſembly 1649, appoints, where the congregation is diſaffected or malignant, the preſbytery to provide them with a miniſter. Where a pariſh, or its greater part, is remiſs or erroneous, and therefore will not, or delays to call a miniſter, the preſbytery in that caſe, by their power from Chriſt, may give a miſſion or call to a particular perſon, and ordain

him to labour in the work of the miniſtry among that people; by virtue whereof, he hath right to enjoy both office and benefice. By the 18th canon *concilii Antiocheni*, it is determined, "Si quis ordinatus non ierit in parochi-"am ad quam eſt ordinatus, non ſua quidem culpa, ſed "propter populi recuſationem, vel aliquam aliam cauſam, "quæ a ſe non oritur is ſit et honoris et muneris parti-"ceps."

The meeting of electors; the election itſelf; the call ſigned; the power of the abſent electors accreſceth to theſe preſent.

§ 6 When the day is come on which the electors were appointed to meet, by the above-mentioned order of intimation, the miniſter, whom the preſbytery ordered to moderate at the election, having ended ſermon, and diſmiſſed the congregation, except theſe concerned, is to open the meeting of electors with prayer; and thereafter they proceed to vote the perſon to be their miniſter, as they are called upon by the ſeſſion-clerk, who is alſo clerk to that meeting: which vote being taken and carefully marked, the moderator is to pronounce the mind of the meeting, *viz* That a call be given to the perſon named; which the clerk is to have ready drawn up to be read and ſigned by them in preſence of the moderator. The meeting of electors having been convened upon the preſbytery's intimation, if either heritors, elders, or town-council, be wanting or abſent, their power accreſceth to theſe preſent, they having all had the lawful advertiſement given them, and none of theſe diſtinct bodies has a negative upon another.

Form of a call.

§ 7 We the heritors, elders, and magiſtrates of the town-council of being deſtitute of a fixed paſtor, and being moſt aſſured by good information, and our own experience, of the miniſterial abilities, piety, literature, and prudence, as alſo of the ſuitableneſs to our capacities of the gifts of you Mr A. B. preacher of the goſpel, or miniſter at C. have agreed, with the advice and conſent of the pariſhioners foreſaid, and concurrence of the Rev. preſbytery of D. to invite, call, and intreat: Likeas, We, by theſe preſents, do heartily invite, call, and intreat you, to undertake the office of a paſtor among us, and the charge of our ſouls. And further, upon your accepting of this our call, promiſe you all dutiful reſpect, encouragement, and obedience in the Lord. In witneſs whereof, *&c.*

§ 8. There-

§ 8. Thereafter the moderator is to attest, that, conform to the presbytery's appointment, he did moderate at the meeting of electors, the plurality, or all whereof present, made choice of Mr A. B. to be their pastor at such time and place. Which attestation he is to sign upon the call. See § 33. In case there be a parity among the electors votes, (that is, when they split or divide in their calling of two persons), then the moderator must either be allowed the casting vote, or else application must be renewed to the presbytery to convene the electors a second time.

The attestation of a call; and what is to be done, if the electors divide in voting.

§ 9. The right of patronage, according to Streinius's *Summa juris canonici*, is a power to present a fit person to a vacant church-benefice: which right is acquired several ways; as, 1. When one gifts ground to build a church upon. 2. If, with consent of the bishop, one build a church. 3. If one bestows upon a church, or mortifies to these serving the cure thereat, some considerable maintenance. These three ways are contained in that known verse, "Patronum faciunt, dos, ædificatio, fundus." The 4th way is, An immemorial custom of presenting. 5. By a privilege and gift thereto derived from the Pope

Patronages described, and how acquired at first.

§ 10. The right of patronages with us in times of the late Prelacy became so twisted with other secular interests, that it was expressly avowed and pleaded for as a part of a man's private patrimony, the rights whereof he had settled and confirmed to him and his heirs, as these of his other estate, by charters under the seals, and might lawfully sell and dispose of it, and from which he could not be excluded without injustice; these rights were then transmitted according to the common degrees and rules of blood.

Patronages, how considered under Prelacy.

§ 11. This church maintains, That the patron's pretended privilege of a negative interest in the call and maintenance of ministers, is a sinful and wrongous usurpation, without warrant from the word of God, destructive of the true liberties and interest of the church, and most scandalously offensive to all ranks of Christians therein. This is gathered from their writings and sermons, and act of Assembly August 4. 1649.

The opinion of this church of it.

§ 12. The minister who moderated the call, and these commissioned to prosecute the same, shall next presbyte-

Call presented and approved.

ry-

ry-day preſent the call to them. If they find no ground to demur upon granting their concurrence, then they are to grant the ſame, which the clerk is to ſignify upon the call. But if they find grounds to delay or refuſe their approbation, in that caſe theſe are to be particularly condeſcended upon in their records: Thus the preſbytery is vindicated from arbitrary procedure, and parties concerned have acceſs to make anſwer for themſelves.

Calls proſecuted to expectants or miniſters.

§ 13. If the call be to a probationer within the preſbytery's bounds, then the preſbytery is to put him upon trials, in order to ordination. But if he be under the inſpection of another preſbytery, then the preſbytery to whom the call was firſt preſented, and with which they have concurred, is to write, or ſend one of their number, together with the pariſh commiſſioners, and deſire that preſbytery where the probationer reſides, to concur with them in offering the call to him, and injoining him to repair to the bounds to which he is called, and there ſubmit to the ordinary trials, in order to ordination. How the call ſhould be proſecuted to a fixed miniſter, ſee in the following title.

Calling and entry of a miniſter is to be directed by the preſbytery.

§ 14. It is to be remembered, that no probationer or miniſter, is to receive any call to a vacant congregation, but from the hands of the preſbytery to which they belong; for, it is by their determination that the calling and entry of a miniſter is to be ordered and concluded. K. William and Q. Mary's parl. ſeſſ. 2. cap. 23.

Ordination deſcribed: no *miniſterium vagum.*

§ 15. Ordination is the ſolemn act of the preſbytery, ſetting apart a perſon to ſome publick church-office: For this ſee the Directory. It is agreeable to the word of God, and very expedient, that ſuch as are to be ordained miniſters be deſigned to ſome particular church, or other miniſterial charge; See the Directory and Heads of the Polity of the Kirk; as alſo the 10th act, chap. 1. of the French church-diſcipline; wherein they agree, that miniſters ſhall not be ordained, without aſſigning them a particular flock.

Mens gifts ſhould be ſuited to their poſts.

§ 16. By the ſame article, miniſters muſt be fit for the flocks which ſhall be aſſigned unto them; and by the act of Aſſembly 1596, ratified December 1638, it is determined, That becauſe men may be fit for ſome places, who are not meet for others, the principal places are to be provided with men of moſt worthy gifts; and none are to accept

cept of a greater charge than they are able to discharge. Indeed, when a minister is endowed with prudence, and hath love and respect from his people, a greater charge will be easier to him than to another.

Trials of an intrant to the ministry; and serving of his edict.

§ 17. On a probationer's accepting of the call of a parish, which is understood to be done when he submits himself to the presbytery to undergo his trials in order to ordination, he is by them to be tried, as when he was licensed, (for which see that title), except the homilies and previous catechetic trials. When the presbytery is satisfied of his trials, they send one of their number to preach in that congregation, and after forenoon's sermon, to intimate to them, that the probationer whom they have called to be their minister, his edict was now to be served. Which edict, after reading by him or the precenter, is to be affixed by the bedal upon the most patent church door: The tenor whereof is as follows.

Form of an edict.

§ 18. This presbytery having received a call from the parish of to Mr A. B. preacher of the gospel, to be their minister, and finding the same orderly proceeded, and the said Mr A. B. having undergone all the parts of his trial, in order to his ordination; and the presbytery upon the whole judging him qualified to be a minister of the gospel, and fit to be pastor of this congregation, have resolved to proceed, unless something occur which may justly impede the same: and therefore do hereby give notice to all persons, especially the members of this congregation, that if any of them have any thing to object, why the said Mr A. B. should not be admitted pastor here, they may repair to the presbytery, which is to meet at the day of with certification, that if no person object any thing that day, the presbytery will proceed without further delay.

The edict returned and executed.

§ 19. The presbytery meeting, as it was appointed by the preceding, for receiving the execution of the edict, which ought to be ten free days after serving of the same, the minister who was appointed to preach at serving of the edict, is to give an account of his diligence, and return the edict indorsed by himself or the precenter and bedal; then the presbytery is to order their officer, three several times, at the most patent door of the church, to give notice, That if there be any there who has any thing to object against the person called his being their minister, they may come and

and do it to the presbytery; with certification, as in the edict.

Ordination-day set, and intimated: and what day most convenient for the fast.

§ 20. If there be no material impediment found, the presbytery is to name a convenient day within less than ten days, if it can be, for their meeting to ordain the candidate at the church of the congregation to which he is to belong. The day appointed for his ordination, is to be intimated from the pulpit on the Lord's day preceding, inviting all to be present, and telling them that they are to set apart that day as a fast to be by them observed with more than ordinary supplication, for the assistance and blessing of God upon the ordinance of Christ, and labours of his servant. But the ordination-day is more proper for thanksgiving than fasting, and experience may confirm us herein: for we find, that on the account of some things convenient to be done that day, another before were fitter to be observed for the fast.

Popular ordination condemned from acts vi. 3.

§ 21. Our church doth condemn any doctrine that tends to support the peoples power of ordaining their ministers: for by the 5th act of Assembly 1698, upon information that a divine of the church of England, had in his sermon charged them as corrupters of the word of God, who to favour popular ordinations, had caused that passage of scripture, Acts vi 3. "Whom WE may appoint over this busi-"ness," to be printed, "Whom YE may appoint," &c. they did unanimously disclaim the above-mentioned error of the press, and did declare, they did not own any other reading of that text to be according to the original, but "Whom WE may appoint," &c.

The ordination-sermon, and preface to the action.

§ 22. The ordination-day being come, conform to the presbytery's appointment, one of their number preacheth; the subject of whose sermon should be concerning the qualifications of ministers, and the reciprocal duties betwixt them and their people. The sermon, prayer, and praises after sermon, being ended, the minister from the pulpit is to shew the occasion of that day's meeting, and all the steps of the presbytery's procedure hitherto with respect to that affair.

The questions to be answered by the intrant before imposition of hands, or, his ordination engagements.

§ 23. Then the minister calls on the intrant, who, in face and audience of the congregation, is to answer to these following questions: 1. If he doth believe the scriptures of the Old and New Testaments, and the truths therein contained,

contained, to be the word of God? 2. If he doth own, and will adhere unto the confeſſion of faith, and catechiſms of this church, and doctrine therein contained, as being founded on, and conſonant to the holy ſcriptures? 3. If he will be faithful and zealous in maintaining all the truths of the goſpel, the unity of the church, and peace thereof, againſt all error and ſchiſm whatſoever, notwithſtanding of what trouble or perſecution may happen? 4. If he do likewiſe own and will adhere to the worſhip, diſcipline, and government of this church, as being founded on, and conſonant to the holy ſcriptures? 5. If he hath been led in his deſigning the work of the miniſtry, by a ſingle and ſincere love to God, and aim at his glory in the goſpel of his ſon, and not by filthy lucre, and the motives of worldly gain, as the great inducement moving him to the miniſterial work? 6. If he hereby engage to be diligent and aſſiduous in praying, reading, meditating, preaching, adminiſtring the ſacraments, catechizing, and exerciſing of diſcipline, and in performing all other miniſterial duties toward the people committed to his charge? 7. If he reſolves to own his ordination to the holy function of the miniſtry, and to continue in duty, notwithſtanding of any trouble that may ariſe in the church hereafter? *vide Quæ.* 3. 8. If he will humbly and willingly ſubmit himſelf unto the admonitions of his brethren, and diſcipline of this church? Laſtly, If he will take care that he himſelf and his family ſhall walk unblameably, be examples to the flock, and adorn the profeſſion of the goſpel by their converſation?

The place where, and the manner how, ordained.

§ 24. In the moſt conſpicuous place of the church, and near to the pulpit, a table and ſeats being placed where the brethren of the presbytery, the heritors and elders of the congregation, with the magiſtrates and council, when in burghs royal, are to ſit, together with the intrant, ſo that all the miniſters may conveniently give him impoſition of hands, and the others may take him by the hand, when thereunto called: the miniſter is to come from the pulpit to the foreſaid place, where the intrant kneeling, (for the more decent and convenient laying on of hands) and the brethren ſtanding, he, as their mouth, in their Maſter's name and authority, doth in and by prayer ſet the candidate apart (not only the miniſter who prays, but all the brethren that conveniently can, laying their hands upon

his head) to the office of the miniſtry, invocating God for his bleſſing to this effect:

Directory for ordination prayer.

§ 25. Thankfully acknowledging the great mercy of God in ſending Jeſus Chriſt for the redemption of his people, and for his aſcenſion to the right hand of God the Father, and thence pouring out his ſpirit, and giving gifts to men, apoſtles, evangeliſts, prophets, paſtors, and teachers, for the gathering and building up of his church, and for fitting and inclining this man to this great work, and to intreat him to fit him with his Holy Spirit, to give him, who, in his name, is ſet apart to his holy ſervice, to fulfil the work of the miniſtry in all things, that he may both ſave himſelf and the people committed to his charge.

The right hand of fellowſhip; he is ſaluted as miniſter: the concluſion of the work.

§. 26. The prayer being ended, the miniſter who moderates in the action, and thereafter all the miniſters of the preſbytery, takes the perſon ordained by the right hand, ſaying unto him, we give unto you the right hand of fellowſhip, to take part of the miniſtry with us. Then the heritors, elders, and magiſtrates, when in burghs, ſhould ſalute him as their miniſter, in taking him by the right hand, as a teſtimony of their acceptance of him. Then the miniſter returning to the pulpit, after having had a ſhort and pertinent exhortation, both to the miniſter and people, he is by ſolemn prayer to commend both paſtor and flock to God's grace. Then he is to ſing a part of a Pſalm, ſuch as 132. from verſe 11. and diſmiſs the congregation, with pronouncing the bleſſing.

Form of an act of ordination and admiſſion.

§ 27. The whilk day the preſbytery of met at the kirk of conſidering that there had been a call preſented upon the day of unto them, from the heritors, elders and pariſhioners of the ſaid pariſh of to preacher of the goſpel, to be their miniſter: To which call the ſaid preſbytery of their concurrence was ſought by the ſaid pariſh, within the bounds of which preſbytery the ſaid pariſh lies; and with which call the ſaid preſbytery did concur, as their act thereanent, dated &c bears: likeas, conform to the acts and conſtitutions of this church, obſerved in the like caſes, and at the deſire of the ſaid pariſh, the ſaid preſbytery did put the ſaid then only a probationer, to all the parts of his trial for the miniſtry, as is uſual, wherein he was approven to the ſatisfaction of the ſaid preſbytery. After which,

which, the presbytery of did cause serve his edict at the said church of in the due and orderly form, on a Sabbath day, being the day of whereby it was publicly intimate to the said congregation, that in case any person had any thing to object against the said Mr why he should not be ordained and admitted minister to the said charge of they might apply themselves to the said presbytery of which was to sit at the day of where they should be fully heard; with certification as effeirs. And accordingly, the brethren of the presbytery met at the day aforesaid, and the edict being returned indorsed, and all parties concerned in the said congregation being lawfully called, and none compearing to object against the said ordination and admission, therefore, the said presbytery did determine to meet at the kirk of upon the day of in order to the ordination and admission of the said Mr to the said parish, and appointed Mr minister of the gospel at within their bounds, to preach at the said admission and ordination. Which being accordingly performed, the brethren met presbyterially, taking the whole matter to consideration, as said is, did then and there, in due order, and all requisite formalities, solemnly ordain, admit, and set apart, by imposition of hands and prayer, the said Mr in face of the whole congregation there present, to the sacred order of the ministry, in the said congregation and parish; and afterwards was received to ministerial communion by the brethren of the ministry, and by the heritors and elders as their minister. This is extracted, &c.

§ 28 While the church doth enjoy peace, and is at full liberty, it is very reasonable that the above comely order should be observed; but in troublesome times, and in cases of great necessity, ministers must be ordained without particular relation to a parochial charge, otherwise there shall be no ordination in times of persecution. By act 4. chap. 1. of the French church-discipline, it is declared, That in such extraordinary cases, a minister of the gospel may be ordained by three ministers: but in times of peace, by no fewer than seven, and in case the colloquy consist of fewer, it must call in some of the neighbouring ministers to accomplish that number. Ordination *sub cruce*, and *quorum* for ordination.

The manner of election and ordination at our Reformation.

§ 29. You will find the old manner of electing and ordaining of ministers at the beginning of our Reformation, in Knox's forms, prefixed to the old Psalms, that it was performed without imposition of hands, and without a nursery of expectants: which notwithstanding was an ordination both valid and lawful, especially in that infant-state of this reformed church.

Re-ordination of Popish clergy, and Episcopal incumbents.

§ 30 By the 2d and 3d articles, chap. 1. of the French church-discipline, the bishops, curates, priests, and friars, among the Popish clergy, turning Protestants, were to be re-ordained by imposition of hands. And in the sixth session of Assembly 1690, the moderator is allowed and authorised to declare, in their name, that they would depose no incumbents simply for their judgement about the government of the church, nor urge re-ordination upon them.

The age and literature of those to be ordained.

§ 31. None are allowed to enter the ministry, under the age of twenty-five years, except such as the synod or Assembly judge fit for the same: see Assem. 1638, 1647, and 1704, session 10. Other churches have likewise very much regarded the age of intrants to the ministry; for by the 14th *canon concilii sexti in Trullo*, it is said, "sancto-"rum divinorumque patrum nostrorum canon in his quo-"que valeat, ut presbyter ante trigesimum annum non or-"dinetur etiamsi sit homo valde dignus;" which canon agrees with the 11th *concil. Neocæsar.* This church hath likewise a special regard to the literature of intrants, (of which more afterwards), and it is generally esteemed an essential accomplishment, that they should have the Latin tongue: for you will see in the supplement to Calderwood's history, that in the Assembly 1575, it was ordained, That none should be admitted ministers, except such as can interpret and speak congruous Latin, unless the General Assembly, for their singular gifts and graces, found cause to dispense therewith. Accordingly they have, both of old and of late, dispensed therewith; particularly the Assembly 1708, appointed the presbytery of Sky, after trial of his other qualifications, to ordain one to be minister at St Kilda, who wanted the Latin tongue.

None having the Irish language, to be fixed in the lowlands; or those born on the north side of Tay, to be settled in the south.

§ 32. By the 4th act of Assembly 1699, ministers and probationers having the Irish language, are not to be settled in the low country, till the highland places be first provided: and by the 16th session of the same Assembly, presbyteries

presbyteries are to be cenſured who ſettle any probationer in the ſouth who was born on the north ſide of Tay (except it be in the caſe of a call given to ſuch probationers by the city of Edinburgh) till they have been twelve months in the north, without receiving a call there; in which caſe they are free to come ſouth, and accept of a call; and any north-country probationer, who ſhall be otherwiſe ſettled, is *ipſo facto* tranſportable. And no doubt the ſame certification may be extended againſt miniſters and probationers, having the Iriſh language, that are ſettled in lowland congregations, contrary to the foreſaid act, conform to the 11th act of Aſſembly 1708.

How calls are proſecuted from the north, and how they differ from the ordinary method.

§ 33. By the 16th act of Aſſembly 1697, for the more expeditious planting of the north, the agent of the kirk, or any perſon deputed by him, is authoriſed to proſecute calls from the north ſide of Tay, and other presbyteries there mentioned, to any miniſter belonging to any pariſh on the ſouth ſide of Tay: but as for pariſhes in the ſouth of Scotland, they proſecute calls thus: After the call hath been ſigned and atteſted, as in ſect. 8. the moderator is to propoſe to the meeting, that they appoint ſome of their number, not only to preſent their call to the presbytery, for their approbation and concurrence, but to proſecute the ſame till it be brought to an iſſue: which commiſſion is to be ſigned by the moderator and ſeſſion-clerk, in reſpect that all the deeds of that meeting are recorded in the ſeſſion-books.

The army, by whom to be inſpected, and how to be fixed with miniſters.

§ 34. By the 13th act of Aſſembly 1697, upon a letter from the commander in chief of his Majeſty's forces, it is recommended to the reſpective kirk-ſeſſions where the forces are quartered, to provide them with convenient ſeats for hearing, and to inſpect them as they do other pariſhioners. And the commiſſion of the General Aſſembly, upon application from the chief commanders, is to ſettle miniſters in regiments belonging to this kingdom: but when the commiſſion is not inſtructed to receive ſuch applications, then, no doubt, they are to be made to the presbyteries. Thus we ſee that miniſters do not receive their warrant to take overſight of a regiment, as colonels and other officers do their commiſſions from the Sovereign.

Differences about intrants, how compoſed.

§ 35. By the 13th act of Aſſembly 1708, it is tranſmitted as an overture to presbyteries, that when the ſufficiency

cy of intrants to the holy ministry is contested in the presbytery that ordains them, that in this case the presbytery shall refer the whole affair to the respective synods, and that the synod shall appoint some of their number to examine *coram* such intrants, and give directions to the presbyteries in such cases.

TITLE II.

Of Transportation and Admission of Ministers.

Transportation described.

§ 1. TRansportation or translation is an authoritative loosing of a minister's relation to one charge, and a making up of that same relation betwixt him and another, done for the greater good of the church. This act hath no resemblance to the dissolving of the relation itself betwixt a minister and the church, as in the censure of deposition; but it only resembles a master's taking one from labouring in such a part of his vineyard, to continue the same work in another part thereof

Calls must be managed and directed by the presbytery.

§ 2. No minister is to receive or entertain a call from another congregation, till it come to him by his own presbytery. And any man transporting himself to another congregation, deserves both to be loosed from his own charge, and debarred from entering into the other; the canonists, upon this title do thus determine, "Qui enim sua propria "authoritate ad aliam se transfert ecclesiam, priore relicta, "& suam amittit & ab aliena repellitur. Vide Petri Liar- "noy examen juridicum"

How a presbytery proceeds in presenting a call.

§ 3. The presbytery having heard, by word or petition, these commissioned from the vacant congregation to prosecute the call, and after sustaining their commissions, and finding the call, as to what appeareth at present, to be orderly, and the reasons thereof not without some ground and weight, they are thereafter, at the same diet, to deliver their call, by their moderator, to the minister desired to be transported, with the reasons thereof, and to summon him, *apud acta*, to appear before the presbytery; the time for compearance being at least fifteen free days thereafter.

The ordinary method for citing intransportations.

§ 4. If the minister called be absent from the presbytery, then the call, with the reasons thereof, or rather a double of both, attested under the clerk's hand, are to be delivered

delivered to him by the presbytery-officer, either personally, or at his dwelling house, together with a citation for him and his parish to appear *ut supra*

§ 5. A. B. moderator, &c. Forasmuchas, the heritors, elders, &c. of the parish of have applied to us for our warrant and precept to cite Mr C. D minister at and the parishioners thereof, to hear and see the said Mr C. D. transported in manner, and to the effect under-written, conform to a call given him by the said parish: Herefore, we require you, that upon sight hereof, ye pass, and lawfully summon the said Mr C. D. personally, or at his dwelling-place: And sicklike, all and sundry the parishioners of the said parish of by open reading hereof, and affixing a just copy of the same, at and upon the parish-kirk door, upon a Sabbath-day before noon, immediately after sermon and pronouncing the blessing, all upon fifteen free days warning, to compear before the said presbytery, within the kirk of upon the day of next to come, in the hour of cause, with continuation of days, to hear and see the said Mr C. D. transported, by sentence of the said presbytery, from the said parish of to the said parish of to serve in the work of the ministry thereat; or else to alledge a reasonable cause to the contrary: with certification to them, if they fail, they shall be holden as consenting to the said transportation; and the said presbytery will proceed to do therein according as they shall find just. And this our precept you are to return duly execute and indorsed. Given at by A. B. *Pibrii Cls.* Form of a summons of transportation.

§ 6. If the presbytery have ground to fear that their officer may meet with molestation or opposition in executing of their summons, the General Assembly, for preventing of deforcement and profanation of the Sabbath, by their 7th act, 1704, ordains the minister himself, being cited *apud acta* by the presbytery, or, if absent, by the presbytery's letter, to be present at the day appointed for hearing the cause: whereof the minister is appointed to give advertisement from the pulpit, to his elders, heritors, &c; in short, to all that were concerned in calling him, that if any of them has a mind to defend their right to him, they may be present at the presbytery on such a day. For which cause the minister is appointed to communicate unto them the How, in extraordinary cases, a parish is to be cited. Call and reasons must be imparted to the parish.

the call, and the reasons thereof, transmitted to him: but this he ought also to communicate in all ordinary citations, if he intends the parish should defend their right and possession. As for this extraordinary way for citing a parish, there was more need for it at the beginning of our happy Revolution, when there were few ministers and expectants, and many competing vacancies: But now when the churches are generally planted, and seeing there is such a plentiful nursery of hopeful probationers for supplying the few remaining vacancies, there is rather ground to fear that there be competing different calls from one parish, than of calls from distinct parishes to one man: But if it should happen that neither minister nor parish compear, then the presbytery is to grant certification against them, by holding them as consenting to the desired transportation.

Extraordinary citations rarely needed in a well planted church.

What done in the case of non-compearance.

Vacancies must first essay to call probationers.

§ 7. By the 6th act of Assembly 1694, it is recommended to vacant parishes, That they do not attempt a transportation, till they first seriously essay and follow other means of providing themselves; which is indeed the speedy way to increase the number of labourers in the Lord's vineyard, and to continue others at the place appointed for their work.

How debates in transportations should be managed.

§ 8. By that same act of Assembly, all debates in processes of transportation, must be managed with that meekness and brotherly kindness, as becometh parts and members of the some body of Christ, and that they represent their reasons and answers with perspicuity and brevity.

Rash appealers in transportations, when to be censured.

§ 9 And to prevent contentious appeals in such matters, it is ordained by that act, That if both the competing parishes be within the same presbytery, in that case the presbytery's decision shall be obeyed; or if the parishes be in different presbyteries, and both presbyteries in the same synod, in that case the decision of the synod shall take effect. But with certification, that the respective judicatures appealed from shall be censured, if they be found to have malversed; and, on the other hand, if any be found unnecessarily to pursue appeals and complaints, they shall be severely censured therefor.

Every benefice should be recorded.

§ 10 By the 5th act of Assembly 1702, the parish craving transportation, is to satisfy the judicature if there be a legal stipend, and a decreet therefor. It were to be wished that the church were truly and better informed of the quantity

quantity and circumſtances of every benefice within the nation, that ſo they might be directed to apply accordingly; and, for that end, let presbyteries be appointed to give in an exact account of theſe within their bounds, that the ſame may be inſert and regiſtrate in the books of the General Aſſembly, conform to the act Auguſt 31. 1647.

How the ſuitableneſs of mens gifts is to be tried, and what is meant by eminent congregations.

§ 11. Actual miniſters, when tranſported, are not to be tried again, as was done at their entry to the miniſtry: but only the presbytery, in which the calling pariſh lies, ſhall judge of his gifts, from what they have heard of him in the exerciſe thereof, whether they be fit and anſwerable for the condition and diſpoſition of that congregation. There are abilites requiſite to make one a fit miniſter for ſome conſiderable pariſhes, which are not ſo neceſſary to one in a ſmall private pariſh. Eminent congregations are ſuch, where are univerſities, towns and burghs, places of noblemens reſidence, or frequency of Papiſts. See Aſſem. Auguſt 2. 1642, interpreting the act 1596, concerning the trial of miniſters, ratified December 17. 1638, and § 16. tit. 1.

Prayer is to be made before entering upon the proceſs of tranſportation.

§ 12. As there uſeth to be ſolemn prayer at the fixing of a miniſterial relation to a certain charge, ſo when that is changed and carried into another, it is very fit, as is uſed, that light and direction ſhould be ſought in ſuch a weighty and concerning matter to the church, from the glorious God and bleſſed Head thereof, and that immediately before the judicature enter upon the proceſs.

Form of an act of tranſportation.

§ 13. The which day, anent the ſummons touching and anent the citations given to the ſaid Mr A. B. and his ſaid pariſhioners, to have compeared before the ſaid preſbytery, at certain days now bypaſt, with continuation of days; the ſaid ſummons, and all parties having intereſt, being called in preſence of the ſaid presbytery; and laſt of all, upon the day and date of thir preſents, the ſaid purſuers compeared by their commiſſioner; and the ſaid Mr A B. and his pariſh of being lawfully ſummoned, and they compearing; the ſaid presbytery having heard and conſidered the call given to the ſaid Mr A. B. by the ſaid pariſh of and the reaſons produced by the purſuers for inforcing the ſaid tranſportation; and alſo having maturely conſidered the good and advantage of the church in the ſaid tranſporta-

tion, and being well and ripely advised in the haill premisses; the said presbytery (after calling upon God for light and direction) by their vote, have transported, and hereby transports the said Mr A. B. from the said parish of to the said parish of to serve in the work of the ministry, as their lawful pastor thereat, and appoints Mr C. D minister of to declare the said kirk of vacant upon Sabbath the day of conform to the acts, practice, and constitutions of this church used in the like cases

How to proceed when two parishes lie in different judicatures,

§ 14. If the congregation to which the minister is called doth lie in the bounds of another presbytery, then the presbytery to which he belongs does only transport him, declares his kirk vacant, and appoints him to wait for, and obey the orders of the presbytery where the charge lies to which he is transported, as to the time of his admission thereto. But if both parishes lie within the bounds of the judicature which transports, then they appoint the time of his admission also.

Ministers without flocks, how admitted.

§ 15. If the minister called had not any relation to a particular charge in the church, then the presbytery hath nothing to do but admit him after the former steps of call and edict, &c.

The manner of admitting ministers.

§ 16. When a minister, formerly ordained, comes to be admitted minister in such a congregation, the same is performed by the presbytery in face of the congregation, with the same solemnities of an ordination; only there is no re-imposition of hands, nor any thing that is peculiar or essential to ordination; and the only questions needful are these: 1. If he does adhere unto, and promise, in the Lord's strength, to perform his ordination-engagements? 2. If he hath had any indirect hand in his own transportation or admission to this parish? 3. If he doth now accept of the charge of this parish, and promise, in the Lord's assistance, to discharge all the parts of the ministerial function among them faithfully?

The form of an act of admission.

§ 17. The presbytery of being met at the parish-kirk of conform to an appointment made by the said presbytery, dated to the effect under-written, taking to consideration, that the present magistrates, town-council, heritors, and elders of the said burgh and parish of had given a call to Mr A. B. minister of the gospel,

goſpel, inviting him to be their miniſter: And ſicklike, That the ſaid call had been orderly preſented to the ſaid presbytery, and by them ſuſtained; and alſo, that the ſaid call had been accepted by the ſaid Mr A. B. and that thereupon the ſaid presbytery had appointed the ſaid Mr A. B. his edict to be ſerved upon Sabbath the day of and alſo appointed a meeting of the ſaid presbytery for his admiſſion, to be held this preſent day and place. The ſaid presbytery being now met conform to the ſaid appointment, and having ſeen and conſidered the ſaid edict duly and orderly ſerved and indorſed, and returned conform to the practice of this church, did cauſe thrice publicly call all having or pretending to have intereſt, to compear and propone their objections, if they any had, againſt the ſaid Mr A. B. his life, doctrine, or qualifications, or againſt the foreſaid call, and the procedure thereon, above mentioned, why he ſhould not be admitted lawful miniſter of the ſaid burgh and pariſh: but none compeared to object thereagainſt. Likeas thereupon after ſermon preached, conform to appointment of the ſaid presbytery by Mr C. D. miniſter at the ſaid presbytery did, in preſence of the whole congregation there aſſembled for the time, admit, receive, and appoint the ſaid Mr A. B. to be miniſter of the foreſaid burgh and pariſh, according to the order and practice of this church. And ſicklike, the magiſtrates, town-council, heritors, and elders of the ſaid burgh and pariſh, did take the ſaid Mr A. B. by the hand, in teſtimony of their receiving him to be their miniſter. Extracted forth of the records of the ſaid preſbytery, by &c.

§ 18. Acts of ordination and admiſſion by the presbytery, are in place of preſentation, collation, and inſtitution, and ſerve for them all, as a ſufficient and legal title to the benefice.

The effect and uſe of ordination and admiſſion acts.

§ 19. Some things there are which may debar a man's entering into the miniſtry, and may be reaſon enough for the church to ſhut the door upon him, ſuch as ſome miſtakes and eſcapes offenſive in the life, that may proceed from raſhneſs, weakneſs, ignorance, or want of prudence: yet when once he is admitted, and entered, the like eſcapes will not be found ſufficient to depoſe and thruſt him out;

Impediments to admiſſion, not always grounds for depoſition.

for, "Multa impediunt matrimonium contrahendum, quæ "non dirimunt contractum."

TITLE III.

Of Acts of Transportability, of Demissions, and Missions, and Colleague Ministers.

The ground for, and method of prosecuting this act.

§ 1. WHEN a minister labours under insupportable grievances in a parish, whereby his ministry is rendered unedifying to the people, and uncomfortable to himself; in these circumstances (all other means having been essayed and proved ineffectual for redressing his grievances) the pastor doth apply to the presbytery for an act of transportability. Whereupon they appoint one of their number to preach at that kirk, and after forenoon's sermon to advertise the parish, being the defenders, to appear before the presbytery, on such a day, and there hear and see their minister obtain that act in his favours, or otherwise to propone reasons in the contrary. After hearing of both parties, their brother's complaint being found relevant and verified, an act of transportability is granted.

The nature and import of this act.

§ 2. By which act the presbytery looseth their brother's relation to that parish as fixed minister thereof, and declares, that through their direction and inspection, he is capable to receive a call to any other charge, without their being called as having any interest: yet, in the mean time, till such an occasion of removal be offered, they do appoint him to exerce his ministry in that parish; whereby his right to intromit with the benefice continueth as formerly, the act of transportability being occasioned through the peoples fault. But this act will be but rarely sought in a well planted church: And, without granting it, the presbytery may use innocent and prudent methods for obtaining a call to their grieved brother from some vacant parish, which will as effectually answer the end as such an act can do. Upon the whole, this practice hath been but rare, and its expediency, to say no more of it, is disputed by many.

The causes and stile of demission.

§ 3. It is in the church's power to accept of demissions or not, as they find the grounds of them to be. They use to run in these terms. I Mr A. B. minister at C. for such causes,

cauſes, demit my miniſtry at the ſaid pariſh of C. purely and ſimply into the hands of the presbytery of D. declaring, that for my part, the ſaid pariſh ſhall be held vacant, and that it ſhall be free to the pariſh and presbytery, after due intimation hereof, by warrant of the presbytery, to call and plant another miniſter therein; and conſents that this be recorded in the presbytery books, "ad futurum rei me-"moriam". In witneſs whereof I have ſubſcribed thir preſents at &c.

§ 4. Which demiſſions being received by the presbytery, they are thereupon to appoint one of their number to preach at that kirk, and after forenoon ſermon to make intimation of the acceptation of the demiſſion, and the presbytery's order thereon, to declare the kirk vacant. The execution whereof being reported to the presbytery, and recorded by them, they are to proceed and plant that pariſh, as they do other vacant congregations. The effect of a demiſſion upon intimation.

§ 5. When the vacancies are many, and the miniſters in ſome part of the church ſo few in number, that it exceeds the power of claſſical or provincial Aſſemblies, in whoſe bounds they lie, to ſupply them, then the General Aſſembly who is concerned in theſe bounds, as parts of the national church, doth appoint miniſters by way of miſſion to ſupply theſe vacancies: for this ſee the acts of ſeveral late Aſſemblies for ſupplying the north, and the inſtructions given to their commiſſions concerning that affair. As alſo, by appointment of this church, miniſters have been tranſported, ordained, and ſent in miſſion to the Scots African and Indian company's colony in Caledonia in America. In what caſe the national Aſſembly ſends miniſters in miſſion.

§ 6. Upon petition from the moſt part of the Scottiſh nation in the north of Ireland, in their own name, and in name of the reſt of the Proteſtants there, to the General Aſſembly in the years 1642, 1643, and 1644, repreſenting the extreme neceſſity they had of more miniſters, and how this church had formerly ſupplied other churches in Germany and France. The Aſſembly being willing to ſympathiſe with every member of Chriſt's body, although never ſo remote, much more with that plantation which was a branch of their own church, they did for ſome years ſend miniſters in miſſion to ſupply there, as may be ſeen by the printed acts in the years above named. But in Aſſembly 1690, ſeſſ. 8. they decline to ſend any miniſters to Northumberland, upon In what caſes they ſend to other churches.

upon a petition from some in that country, in respect that these people do not belong to this national church.

Churches should send to the Heathens.

§ 7. As it is the constant prayer and hope of the reformed churches, that the kingdom of Christ may and shall be enlarged, by sending the gospel to the rest of the Heathen; so, in testimony of the sincerity of these hopes and prayers, they must be joined with suiteable endeavours for spreading the gospel among them. This church hath not that happy opportunity, and invitation of concurring Providence to forward that work that some other churches have, through our want of foreign plantations, and by being injuriously dispossessed of what we had, as the thirty-eight minute of the proceedings in parliament 1701 doth complain.

When a colleague is needful. Aged and sick ministers should have both maintenance and a colleague.

§ 8. When a parish, though not of so great extent as to require a new erection, becometh so numerous, that albeit a minister's voice may easily reach them all, the seats being conveniently placed; yet he is not able alone to discharge the other ministerial duties, with that exactness and ease which pastors of ordinary parishes may do, it is but reasonable, in that case, to join a yoke-fellow with him. By the act of Assembly July 30. 1641, it is declared, That old ministers and professors of divinity, shall not by their cessation from their charge, through age and inability, be put from enjoying their old maintenance and respect. This doth likewise agree with the 48th act, chap. 1. of the French church-discipline; and by the book of policy, chap. 7. when ministers, through age, sickness, or other accidents, become unmeet to do their office, in that case, their honour should remain to them, their kirk should maintain them, and others ought to be provided to do their office: Thus they still enjoy double honour, viz. reverence and maintenance.

Colleagues must share both office and benefice.

§ 9. When a parish findeth work for two ministers, and they divide the same equally between them, nothing can be reasonably alledged against sharing of their wages from the parish accordingly; except it be said, that he who gets the first call to the greater benefice, will from that take advantage to keep possession thereof: which practice, however it may receive protection from strict law, yet justice, which is mixed with equity and kindness, condemns it, seeing his helper or second is to be always as fit for the same charge as he, as is appointed by Assembly 1646, in the first

first remedy proposed against the corruptions of the ministry.

§ 10. When he who had the greater stipend (it having been neglected at his entry to oblige him to divide the same equally with his colleague) is now removed by death, or otherwise, then the parish is not obliged to allow the surviving colleague to succeed to and uplift the first stipend, except he be content, and engage to amend his predecessor's manners, which if he refuse to do, at the sight of his callers and the presbytery, then let him only enjoy the stipend to which he was called But the most effectual way and proper season for obliging colleagues to share their benefices, is thus to be done at their calling and admission: Insert in the call, that as he is to be one of the ministers of such a parish, so he is to have the half of the stipend: and let his ordination and admission act carry that same qualification: But colleagues, of consent, may prevent this. To which the parish may oblige them, how, and when.

§ 11. By the act of Assembly December 17 18. *anno* 1638, one of the ministers, without advice of his colleague, is not to appoint diets of communion nor examination, neither to hinder his colleague from catechizing, (to wit, from house to house), and using other religious exercises, as oft as he pleaseth But now the kirk-session doth direct as to these diets, for communion especially. Public ministerial work is to be perform'd by mutual consent, and private diligence not to be hindered.

§ 12. Colleagues are to apply themselves to doctrine, according to the gifts wherein they most excell, and as they shall agree betwixt themselves; see Directory for preaching the word. How they are to apply their gifts.

TITLE IV.

Of Expectants, as also Students and Bursars.

§ 1. THE presbytery is not only to hinder those whom they know to be unfit, from entring upon their trials; but also they are to look out for, and stir up such, whose gifts are promising, to submit themselves unto trial, and that albeit the one were a professed student of theology, and the other were not. Who they are that the presbytery should encourage to enter upon trials.

§ 2. Before any presbytery invite students to pass their trials, they are to be satisfied as to the soundness of their principles,

Wherein the presbytery is to be satisfied before they invite students to enter upon trials.

principles, and of their sober, grave, prudent, and pious behaviour. And it is appointed, that such persons shall produce, before the presbyteries who admit them to trials, sufficient testimonials from the ministers of the parishes where they lived, and from the legally established presbyteries in whose bounds they resided, and also from the professors of divinity; see the 10th act of Assembly 1694; as also, by an act of the Assembly thereafter, it is recommended to presbyteries, before any be admitted to trials, that they see their testimonials of their passing their course in philosophy, and their obtaining their degrees of masters of arts in some university. And by the 13th act of Assembly 1696, probationers that apply to presbyteries are not only to bring sufficient testimonials, but also a letter of recommendation from a person known to the presbytery. And by the 5th act of Assembly 1705, testimonials from professors of theology, in favour of such as are to enter upon their trials, are not to be regarded by presbyteries, unless they bear their knowledge of these they recommend to trials, as to their moral and pious carriage, as to their progress in their studies, and their promising parts, and of their good affection to the government of church and state, and fitness to serve the church.

Expectants trials.

§ 3. The trials of a student, in order to his being licensed to preach the gospel, do consist in these parts, 1. the homily, which is a discourse upon some text of holy scripture assigned unto him by the presbytery, and delivered before them in private. 2. The exegesis, which is a discourse in Latin upon some common head of divinity appointed him by the presbytery, and delivered before them, at which time also he gives in the substance of his discourse, comprised in a short thesis or doctrinal proposition in paper, which he is to defend, at the presbytery's next meeting, against two or three ministers who are appointed to impugn his thesis. 3. The presbyterial exercise and addition: the exercise gives the coherence of the text and context, the logical division, and explanation of the words, clearing hard and unusual phrases, if any be, with their true and proper meaning according to the original language, and other parallel places of scripture, proposing and answering any textual questions that occur, and then a plain and short paraphrase upon the text: this is ordinarily the work of one hal

half hour. The addition gives the doctrinal propoſitions or truths, which, without ſtraining, may be deduced from the text ſo explained, with reaſons, applications, and pertinent improvement and application, as the other half hour will allow. 4. A lecture, or expoſition of a large portion of ſcripture, ordinarily a whole chapter. 5. A popular ſermon. Theſe three peices of exerciſe, viz. presbyterial exerciſe, lecture, and popular ſermon, are to be in the pulpit before the people. 6. He is to be tried in his knowledge of the original languages, by interpreting a portion of the Greek New Teſtament, *ad aperturam libri*, and reading and expounding a portion of ſome Pſalm in Hebrew. Of his knowledge of ſacred chronology, eccleſiaſtic hiſtory, eſpecially of our own church, anſwering extemporary queſtions, of the meaning of hard places of ſcripture, on heads of divinity, polemic or practical, on caſes of conſcience, on church-government and diſcipline, and is likewiſe to be tried as to his piety, prudence, and former godly converſation, act of Aſſembly January 30. 1698.

§ 4. By the 10th act of Aſſembly 1704, presbyteries are appointed to lay it on ſome of their number to examine the ſtudents in their own preſence upon the ſeveral heads of divinity, and the government of the church, and to know what reaſon they can give of their faith, and if they can anſwer to ſome principal objections of adverſaries againſt it, and that previouſly to all other parts of their trial. From all which it appears, that from the beginning of trials, to the time they are licenſed to preach the goſpel as probationers for the miniſtry, they are a full half year exerciſed in order thereto, allowing the ordinary meetings for presbyteries to be once a month. Which time for trials will yet be longer, if we conſider the 13th act of Aſſembly 1708, appointing private trials concerning his ſenſe and experience of religion, yet previous to all theſe mentioned. Some trials are previous to theſe.

§ 5. By the 3d act of Aſſembly 1697, the commiſſioners from the ſeveral presbyteries within this church, are to bring in an account to the General Aſſembly yearly, of all expectants or probationers for the miniſtry. As alſo, of all ſtudents who attend leſſons of theology in univerſities, and perform the exerciſes enjoined them there, that their names may be read in open Aſſembly, and recorded in their regiſter: Expectants and ſtudents names to be recorded in the Aſſembly books.

ſter: Which is a mean to bind all candidates for the miniſtry to a circumſpect walk, that the church may receive good impreſſions of them.

Form of an act licenſing one to preach the goſpel, and his teſtimonial, and recommendation.

§ 6. At the day of The which day the preſbytery of taking to their conſideration, that in obedience to ſeveral acts of General Aſſemblies made anent trials in order to preaching, they had upon the day of received ſufficient teſtimonials in favours of Mr A. B. ſtudent in divinity, and that thereupon they had appointed ſome of their number to make ſearch and inquiry into the literature and behaviour of him the ſaid Mr A. B. Which brethren having upon the day of reported, That according to the appointment foreſaid, they had privately taken trial of his knowledge in divinity, and of what ſenſe and impreſſion he had of religion upon his own ſoul; and that they had cauſe, from what they found in the foreſaid trial, to judge him fit to be received and entered upon public trials, in order to his being licenſed. Whereupon they, the ſaid presbytery, had admitted the ſaid Mr A. B. upon probationary trials, who having, in all the uſual parts thereof, at divers times thereafter, acquitted himſelf to their ſatisfaction and approbation; therefore they did and hereby do LICENSE the ſaid Mr A. B to preach the goſpel of Chriſt as a probationer for the miniſtry within their bounds, he having in their preſence undertaken the uſual engagements appointed by the acts of this church. Extracted &c. Nota, theſe engagements are here omitted, *brevitatis cauſa, vide* § *ſeq.* At his removal out of the bounds of the presbytery where he was licenſed, his teſtimonial is in this form. At the day of The which day, the presbytery of do teſtify and declare, That Mr A. B. preacher of the goſpel, has, ſince his being licenſed by them, preached ſeveral times, both at their appointment, and the deſire of particular brethren within the bounds, to their ſatisfaction; and that his carriage, ſo far as they know, hath ſince that time been pious, exemplary, and edifying, as became a preacher of the goſpel, and that he hath been obſequious to all their appointments; therefore they do by theſe preſents recommend the ſaid Mr A. B. accordingly to any presbytery where God in his providence ſhall caſt his lot, for all due and ſuitable encouragement from them. Extracted, &c.

§ 7.

§ 7. By the 10th act of Assembly 1691, it is appointed, that when persons are first licensed to preach, they shall oblige themselves to preach only within the bounds, or by the direction of that presbytery which did license them; and they shall also, by promise and supplication, engage themselves, that they shall be subject to the said presbytery, or to any other church-judicature, where in Providence they shall have their abode, and that they shall follow no divisive course; which engagement is to be insert in the body of their license. Vide lib. 3. tit. 8. § 11. A probationer's engagements when licensed.

§ 8. By that same act it is appointed, that when they are removing from that presbytery which did license them, they shall carry with them an extract of their license, and a testimonial of their carriage, which they are to produce to some presbytery constituted by the legal establishment, or at least to some minister therein, before they preach within that bounds; which minister is not to employ them, except in his own pulpit, till he give notice thereof to the presbytery at their next meeting. And they are then to require the same subjection and orderly carriage from them, during their abode in that bounds, to which they were engaged to the presbytery by which they were licensed. What presbyteries or parishes a probationer may preach in, and when to renew his engagments.

§ 9. And in case any probationers shall have their licenses suspended or recalled, for error in doctrine or malverse in conversation, then intimation shall be made thereof by the judicature which hath so censured them to the neighbouring judicatures, or where they shall understand the said probationers are, that so none may employ them to preach. How sentences against them should be intimated.

§ 10. And, lastly, by the same act it is declared, That probationers are not to be esteemed, by themselves or others, to preach by virtue of any pastoral office, but only to make way for their being called unto a pastoral charge. They have no pastoral office

§ 11. It is the laudable practice of some presbyteries, to license no probationers till they acquaint their neighbouring presbyteries, that such persons are passing their trials before them. And upon a return, that they know nothing that should impede their being licensed, then they proceed. Before licensing, other presbyteries acquainted.

§ 12. Every presbytery, consisting of twelve ministers, is appointed to maintain a bursar (that is, one out of the common purse) and where the number is fewer than twelve, they shall be joined to another presbytery. See act of Assembly, Aug. 7. 1641. Each presbytery must maintain a bursar.

The quantity, fund, collection, and continuance of a burſar's maintenance.

§ 13. Every burſar muſt have yearly paid him an hundred pounds Scots at leaſt, the fund whereof ought to be the panalties exacted of delinquents, and ſcandalous perſons, by the civil magiſtrate, and by him delivered to the kirk-ſeſſions. But if that fail, then the kirk-boxes in theſe preſbyteries are to be proportionally ſtinted by them, according to the number of communicants in each pariſh; which maintenance of an hundred pounds is to be collected by the moderator, of the which the ſeveral ſynods are to take account, and their books are to bear the report thereof to the General Aſſembly. It is alſo appointed, that the abode of burſars at ſchools of divinity exceed not four years. Vide act of Aſſembly, Feb. 7. 1645.

Qualifications of burſars, and how they are to be tried

§ 14. By the ſame act, burſars of theology are appointed to bring with them yearly from the univerſities, teſtimonials of their good behaviour and proficiency: and that none be choſen for burſars by presbyteries, but ſuch as are of good report, and have paſt their courſe of philoſophy; and their qualifications are to be tried likewiſe before they go to univerſities, conform to acts of Aſſemblies 1647, 48, and 49. And by the 5th act of Aſſembly 1705, it is ordained, that in no pariſh the miniſter recommend youth to be taught in Latin upon charity in any grammar-ſchool, but ſuch as be dexterous in reading, and can write, and ſuch as he judges to be of virtuous inclinations; which trial is to be in preſence of ſome elders, and no ſchool-maſters are to teach any upon charity, but upon ſuch recommendations. Item, it is ordained that preſbyteries appoint a committee of their number yearly to examine poor ſcholars in grammar-ſchools, that ſo none of them be ſuffered to proceed to colleges, with an eye to burſaries, but ſuch as are of good behaviour, and proficients in the Latin: and miniſters are to recommend none to burſaries not ſo qualified: and maſters of colleges are to lauriate no burſars, but upon clear evidence of ſufficient learning and good behaviour, after ſtrict examination.

Poor ſtudents tho' not burſars, are to be inſpected by presbyteries,

§ 15. For the better breeding of young men to the miniſtry, who are not able to maintain themſelves at univerſities, (nor perhaps find that favour as to get burſaries), preſbyteries where ſuch reſide are appointed to direct their ſtudies. Act June 18. Aſſem. 1646.

§ 16.

§ 16. In order to the advancement and increaſe of the knowledge of God in the highlands, by the act of Aſſembly 1701, it is recommended to ſeveral ſynods to maintain a burſar of theology, having the Iriſh language, out of their own purſes. And by the 13th act of Aſſembly 1704, in reſpect the lowland presbyteries be-ſouth Tay are competently planted, and that the promoting of knowledge in the highlands is of common concern, therefore it is appointed, that the one half of all burſaries of the presbyteries be-ſouth Tay be beſtowed on ſtudents having the Iriſh, at leaſt the half thereof: which act is to continue at leaſt for four years, and longer, if there ſhall be found need. And by the 5th act of Aſſembly 1707, contributions, and erecting of ſocieties for the maintenance of poor ſcholars, are to be encouraged by judicatures, and the commiſſions of Aſſemblies.

Burſars having the Iriſh language encouraged.

§ 17. By the act of Aſſembly February 7. 1645, it is appointed, that notwithſtanding of any progreſs any may pretend to have made privately in their ſtudies, yet in the college they ſhall not at firſt enter to any higher claſs than that wherein the Greek language is taught; and being entered, they ſhall proceed orderly through the reſt of the claſſes, untill they finiſh the ordinary courſe of four years; and otherwiſe, that none be admitted to the degree of maſter of arts, unleſs the faculty of arts find him to be of extraordinary learning.

None muſt leap over the Greek claſs, but finiſh the four years courſe before degrees.

§ 18. By that ſame act it is appointed, that none be allowed to enter the Greek claſs, but ſuch who are found can make congruous themes in Latin, and are not to be promoted to an higher claſs, till it be found that they underſtand what was taught them in the lower. The annual examination of ſtudents at the firſt ſitting down of colleges, looketh as if ſomething like this were intended: but the beſt effects that ſuch examinations do ordinarily now produce, may be the doing of juſtice upon ſome poor ignorant ſtudents, in keeping them back from advancing to higher claſſes: and as for the reſt who pay the maſters their ordinary dues, they are only thereby excited to be at more than ordinary pains for ſome few days. It is a piece of juſtice done to the world, that thoſe who are to gain and live by their learning, ſhould not, under that pretence, be ſuffered to impoſe upon men by ignorance or craft; for what

Nor doth any advance to an higher claſs, till his profiting in the lower does appear.

what a great deal of hurt are immoral, ignorant, crafty, and idle ſcholars, capable to work in their generations? Let them be directed and obliged to ſerve their time in ſome honeſt vocation, where the want of ſo much knowledge cannot do ſo great prejudice; otherwiſe, it is highly reaſonable they ſhould ſtudy to have accompliſhments, and a converſation ſuitable to the profeſſion and character they bear in the world.

Such as remove to other colleges, muſt carry teſtimonials with them.

§ 19. By that ſame act, none who have entered to one college ſhould be admitted to any claſs in another, than that wherein he was, or ſhould have been in the college from whence he came; nor be admitted without teſtimonials from the former maſters, both concerning his literature and dutiful behaviour, that ſo theſe who have been rejected or removed as unworthy or ignorant by one college, may not be admitted or promoted in another. And in order to the better education of young men for the miniſtry, by the 22d act of Aſſembly 1696, it is recommended to profeſſors of divinity, that they require of ſuch ſtudents, as they employ in any exerciſes, teſtimonials from univerſities where they have ſtudied, and the places where they have lived.

Who are to be employed by profeſſors in theological exerciſes.

Univerſities muſt inſtruct on the Sabbath-day.

§ 20. By the act of Aſſembly Auguſt *ult.* 1647, it is recommended to univerſities to take an account of all their ſcholars on the Sabbath-day, of the ſermons, and of their leſſons on the catechiſm.

TITLE V.

Of Schoolmaſters, and Inſtructors of Youth.

Qualifications of ſuch as bear office in ſchools by acts of parliament and Aſſembly.

§ 1. BY the 17th act of King Will. and Queen Mary's parliament, it is ordained, That no profeſſors, principals, regents, maſters, or others, bearing office in any univerſity, college, or ſchool, within this kingdom, be either admitted or allowed to continue in the exerciſe of their ſaid functions, but ſuch as do acknowledge and profeſs, and ſhall ſubſcribe the Confeſſion of Faith, and ſwear the oath of allegiance, (and now they muſt ſubſcribe the ſame, with the aſſurance, *vide* act 6. parl. 1693.), and withal ſhall be found of a pious, loyal, and peaceable converſation, and of good and ſufficient literature and abilities for their reſpective

reſpective employments, and ſubmitting unto the government of the church now ſettled by law. And by the 10th act of Aſſembly 1700, all presbyteries are appointed to take ſpecial, particular, and exact notice of all ſchoolmaſters, chaplains, governors, and pedagogues of youth within their reſpective bounds, and oblige them to ſubſcribe the Confeſſion of Faith; and in caſe of continued negligence, (after admonition), error, or immorality, or not being careful to educate theſe under their charge in the Proteſtant Reformed Religion, the presbytery, with reſpect to ſchoolmaſters, is to apply to the civil magiſtrates of burghs, and heritors in land-ward; and with reſpect to governors, chaplains, and pedagogues, to their maſters, for removing ſuch perſons from theſe offices: and if this be not remedied by them, that the presbytery, with reſpect to ſchoolmaſters, apply to the commiſſion of parliament for viſitation of ſchools and colleges: And it is appointed, that an account be given in every half year to the presbytery, by miniſters, what ſchoolmaſters, chaplains, governors, and pedagogues, are in their reſpective pariſhes. And by the 13th act of Aſſembly 1706, ſuch as have power of ſettling ſchoolmaſters, are to prefer thereto men who have paſt their courſe at colleges, and have taken their degrees, before others who have not, *cæteris paribus*.

§ 2. By the act of Aſſembly, December 17. 18. 1638, presbyteries are to ſee that ſchools in land-ward pariſhes be ſettled with able men, for the charge of teaching the youth public reading, and precenting of the pſalm, and the catechiſing of the common people. Which teaching of the youth I underſtand to be teaching to read, write, and know the principles of religion, according to the act of Aſſembly Auguſt 3. 1642; and by that ſame act, every preſbytery ſeat and burgh is to have a grammar-ſchool.

The work of a land-ward ſchoolmaſter.

TITLE

TITLE VI.

Of Doctors, and Professors of Theology.

The sentiments of this church about the doctor's office. He is no pastor as such.

§ 1. ACcording to the fifth chapter of the Policy of the Kirk, in the General Assembly 1581, the office of the doctor or catechiser, is one of the two ordinary and perpetual functions that travel in the Word. He is to open up the mind of the Spirit of God simply, without such applications as the ministers use. They are such properly who teach in schools, colleges, or universities: But to preach unto the people, to administer the sacraments, and to celebrate marriage, do not pertain to him, except he be called and ordained thereto. If the pastor be qualified for it, he may perform all the parts of the doctor's office, that being included in the pastoral. By the 2d article, chap. 11. of the Discipline of the Freneh church, a doctor in the church cannot preach nor administer the sacraments, unless he be both doctor and minister. And when the General Assembly, February 10. 1645, ratifies the propositions sent to them from the Assembly of Divines at Westminster, concerning church-government, and ordination of ministers, they expressly provide, that the present ratification shall be noways prejudicial to the further discussion and examination of one of the articles or propositions, which holds forth, that the doctor or teacher hath power of the administration of sacraments, as well as the pastor.

Catechists, or doctors, should teach in colleges and in large parishes.

§ 2. Though the office of a deacon is included in the office of a ruling elder, yet it is fit that some be appointed deacons, distinct from that of the elder; so, albeit the office of a doctor be included in that of the pastor, yet it were very fit that some not in the sacred order of the ministry were ordained and set apart to teach and catechise the people, especially in large and incommodious parishes, (See § 3. of the preceeding title,) as well as in schools and colleges.

Synods are to report to the Assembly the names of scholars fit to be professors.

§ 3. By the act of Assembly February 13. 1645, for encouragement to scholars for professions in schools, it is recommended to synods, to try who within their bounds most probably may be for a profession in the schools, and report their names to the General Assembly, that they may be

be ſtirred up, and encouraged by them to frame their ſtudies for ſuch places. This cumulative power doth noways prejudge or hinder the faculty of an univerſity (which hath power and right to elect) from doing of the ſame It were to be wiſhed, that this cuſtom of ſynods, reporting to General Aſſemblies the names of ſuch as are fit to be profeſſors, were again revived, and more exactly practiſed; for it would prevent the tranſporting of miniſters to be only teachers or maſters in univerſities, which is an appointing of him to exerciſe the office of a doctor, and diſpenſing with him from preaching of the word, and adminiſtrating of the ſacraments: Which diſpenſation, or the looſing of which tie, if it be a favour, it can never be impoſed upon any paſtor without his own conſent: but if it be a puniſhment, it can be inflicted upon none without their fault. It is liker a commutation of offices than a tranſportation: or if he ſtill continue to be a paſtor, his paſtoral talent is thereby but much hid in a napkin. By the 3d article, 2d chap. of the French church-diſcipline, doctors and profeſſors of divinity ſhall be elected and tried by the ſynods of the province where the academies are.

No paſtor can be compelled to give himſelf to teaching and leave his paſtoral charge.

§ 4. By the 5th chap. of the Policy of the kirk of Scotland, the doctor, being an elder, is to aſſiſt the paſtor in the government of the kirk. And by the act of Aſſembly Auguſt 4. 1643, profeſſors of theology cannot be elected commiſſioners to General Aſſemblies, except they be miniſters; ſo that, as doctors, they are not ruling elders, and the Aſſembly conſiſts of none but paſtors and elders: therefore, as doctors, they cannot be members of church judicatures for government and ruling; ſee §. 1. huj. tit.

The doctor as ſuch no ruling elder, nor as meer doctor, can be member of Aſſemblies.

§. 5. By the act of Aſſembly June 18. 1646, profeſſors of divinity are deſired to preſent their dictates to the next General Aſſembly; but they declined at that time to make any act about it for the future, till further conſideration.

Profeſſors dictates may be reviewed by General Aſſemblies.

TITLE VII.

Of Ruling Elders.

Why called ruling elder.

§ 1. HE is called a ruling elder, becauſe to rule and govern the church is the chief part of his charge and employment therein; and albeit he may act as a deacon, yet his principal buſineſs is to rule well, and it belongs not to him to preach or teach.

Election of elders.

§ 2. If there be a total vacancy of miniſters and elders in a pariſh, the presbytery ſhould intimate to the heads of families, to meet with ſome of their number on an appointed day, and then name elders. But if the maſters of families do not keep the appointment, then the presbytery are to nominate and chuſe the perſons to be elders. In caſe the vacancy be not total, then the miniſter and elders do chuſe ſuch as ſhould be added to their own number from among the heads of families, and the fitteſt and moſt experienced of them may be ſuppoſed to be among the deacons; ſee Aſſembly Auguſt 1. 1642.

Their trial.

§ 3. The trial is to be by the miniſter and elderſhip of the congregation; or, in caſe of the want of theſe, by the presbytery; and they are to be tried both with reſpect to their converſation, and alſo of their knowledge in the principles of religion, and their ability and prudence for government.

Serving of their edict.

§ 4. Before ordination of elders, the names of the perſons nominated and tried in order thereto, are to be publicly intimate to the congregation; whereby all are required, in caſe of their having any objection that is relevant and true againſt their ordination, to repreſent the ſame to the kirk-ſeſſion.

Ordination of elders.

§ 5. Their ordination is to be by the miniſter of the congregation; or by one from the presbytery, in the caſe above ſuppoſed, in preſence of the congregation, upon a Lord's day after ſermon is ended in the forenoon: at which time, the miniſter calling upon the perſons choſen to be elders, they are to be interrogate concerning their orthodoxy, and to be taken ſolemnly engaged, to adhere to, and maintain the doctrine, worſhip, diſcipline, and government of the

the church, and to lay themſelves furth, by their office and example, to ſuppreſs vice, cheriſh piety, and exerce diſcipline faithfully and diligently. Then the elders choſen, ſtill ſtanding up, the miniſter is next, by ſolemn prayer, to ſet them apart, *in verbis de præſenti.* After prayer the miniſter is to exhort both elders and people to their reſpective duties.

Their admiſſion.

§ 6. In caſe an elder change his reſidence, by removing into another congregation, if the ſeſſion, upon a favory report concerning him, ſhall think fit to add him to their number; then, if he be content to accept, his edict is to be ſerved, and he is thereafter admitted into the ſeſſion; his qualifications having been tried already in the congregation where he was ordained.

Duties of elders more private.

§ 7. As the paſtors and doctors ſhould be diligent in teaching, and ſowing the word of God, ſo the elders ſhould be careful, in ſeeking after the fruit thereof among peoples lives. They are to aſſiſt the paſtor in the examination of them that come to the Lord's table, and in viſiting the ſick: They ſhould cauſe the acts of Aſſemblies to be obeyed: They ſhould be diligent in admoniſhing all men of their duty, according to the rules of the Evangel. And things that they cannot correct by private admonition, they ſhould bring to the elderſhip. See the Heads of the Policy of the Kirk.

They have particular bounds of the pariſh (called quarters in Scotland) aſſigned them to viſit monthly, and report

§ 8. By the eccleſiaſtic remedies againſt profaneneſs, enacted in the Aſſembly Auguſt 10. 1648, it is appointed, that every elder have a certain bounds aſſigned him, that he may viſit the ſame, every month at leaſt, and to report to the ſeſſion what ſcandals and abuſes are therein, or what perſons have entered without teſtimonials: and it were fit, that then ſome time were ſet apart for prayer: and it were alſo fit that elders ſhould always keep an exact liſt of all examinable perſons within their quarters, and thereunto put marks, to diſtinguiſh communicants from the ignorant and ſcandalous, and the poor and indigent from ſuch as need not.

Their more public duties yet reſtricted.

§ 9. The duties of elders which are more public are theſe which lie upon them in the Aſſemblies of the church; in which ruling elders have right to reaſon and vote in all matters coming before them, even as miniſters have: for to General Aſſemblies, their commiſſions bear them to the

same power with pastors. Howbeit, by the practice of our church, the execution of some decrees of the church doth belong to the pastors only; such as, the imposition of hands, the pronouncing the sentences of excommunication and absolution, the receiving of penitents, the intimation of sentences and censures about ministers, and such like. In short, the elder is to speak nothing to the church from the pulpit

Number of elders, and their continuance.

§ 10. The number of elders in every congregation is to be more or less, according to the number of people therein, and plenty of fit and qualified persons for that charge; and when they are once lawfully called to the office, they may not leave it again, while their gifts and abilities for discharging the same do continue. Albeit in some congregations, such a number of elders may be chosen, so as one part of them may relieve another for a reasonable time, from the burden and exercise of their office, as was done among the Levites under the law. See the book of Policy, chap. 6.

TITLE VIII.

Of Deacons.

How the word deacon is taken; the office described. The session censurable that wants them.

§ 1. THE word Deacon is sometimes largely taken for all that bear office in the ministry, and spiritual function in the church: but commonly it is taken for that ordinary and perpetual ecclesiastical office in the kirk of Christ, to whom the collection and distribution of the alms of the faithful, and ecclesiastical goods do belong. See chap. 8. of the Policy of the kirk: Where it follows, that, seeing this office is of divine institution, it is an unwarrantable omission in some congregations, that either they put no difference betwixt elders and deacons, or else they neglect to appoint any to the office of a deacon. See tit. 6. § 2. I do not think it reasonable or very consistent, for any to be zealous against adding to the kinds of office-bearers of Christ's appointment, while they are active in or connive at the diminution of any of them. If it be said, the elder is a deacon, I answer, albeit the pastor includes the office of doctor, elder, and deacon, yet seeing these are of divine institution, reverence is in so far due unto it

as

as to set up these distinct offices: as nothing should be added to the divine institution, upon pretence of imagined decency or order in the invention, so nothing ought to be diminished therefrom, upon pretence that some things in the institution are needless or superfluous.

§ 2. As to what respects the election, trial, ordination, admission, continuance, and number of deacons, the same method may be used about them, as was done concerning elders, *mutatis mutandis*. Their election, &c. the same with elders.

§ 3. The duties of deacons may be reduced to these heads collected from Mr Guthrie's treatise of elders and deacons, and the heads of the Policy of the kirk. 1. That they take exact notice of the poor, and that they timeously make their case known to the session, to the end their straits may be relieved, and so their breaking out into begging may be prevented. 2. They are to collect and receive that supply for the poor, which the members of that congregation, or strangers, shall be inclined to offer. 3. That the money so received be faithfully delivered to the session, according to whose judgement and appointment the deacons are to distribute the church-goods. In which matters they have a decisive vote with the elders: but in other cases their opinion is only consultative, and they may be always present. 4. That they take care of orphans and idiots, and such as want knowledge and ability to dispose of, and order the things that concern their food and raiment. 5. They are to take care that what belongs to the poor be not dilapidated, or misapplied. 6. They are to acquaint the ministers and elders of the sick within their quarters, that so they may be visited, and, if need be, supplied. 7. By the 9th chapter of the Policy of the kirk, deacons were not only to collect and distribute the ordinary alms, but all the church-goods, teinds, &c. and uplift and pay to the ministers their stipends. This were indeed a work proper for their office, an ease to the minister, and would prevent much noise and offence that is raised when charges to make payment are given, either at their own instance, or in name of their assignees or factors. 8. They may be employed to provide the elements, to carry them, and serve the communicants at the Lord's table. Duties of deacons.

TITLE

TITLE IX.

Of Moderators of Church-judicatures.

It is convenient the moderator be a miniſter. His work and power.

§ 1. SEeing the moderator is frequently called to exerciſe the power of order, as ſolemn public eccleſiaſtic prayer, at leaſt twice every ſeſſion, to wit, at its firſt opening, and then at its cloſing, authoritative exhortation, rebuke, direction, it is convenient the moderator be always a miniſter: But if any affect this office, he ſhould be oppoſed in his ambitious purpoſes. The perſon choſen to be a moderator ſhould be of ſuch abilities that he can diſcharge the following work, viz. He is to look on himſelf as the mouth of the meeting; he is to take on him authority, yet looking on it as theirs, not his; he is to ſee all the rules for decency and order, preſcribed by the judicature, exactly kept and obſerved; he is to acquaint the judicature of all the affairs that lie before them, and may propoſe the moſt ſpeedy method how to diſpatch them; he is to keep the members from interrupting one another, and from ſpeaking among themſelves, or from directing their diſcourſe to any other than to himſelf; he ſhould likewiſe keep members, in their ſpeaking, cloſs to the preſent buſineſs; any thing that is ſpoken impertinently, he is calmly to reſent it, according to its demerit, that greater heats may be prevented and diverted; laſtly, after the matter hath been fully reaſoned on all hands, then he is briefly to reſume the ſubſtance of what hath been ſpoke, and thereupon ſtate the vote, and put the queſtion. If the vote be equally carried, then the moderator, (who never votes but in that caſe) may caſt it: and if he be *non liquet*, then the queſtion may be put again at ſome other time. The moderator may likewiſe, upon any extraordinary emergency, by his circular letters, convene presbyteries and ſynods, before their ordinary time of meeting: So may the moderator of the laſt General Aſſembly, only they ſhould be ſure to have ſufficient ground, and ſo cautious, as to have a multitude of counſellors to warrant and ſupport their adventure

No aſſeſſors to our moderators.

§ 2. Our judicatures chuſe no aſſeſſors to their moderators, only he ordinarily prevails with, or invites the moſt ex-

experienced to sit near him, that he may have them ready to direct and advise him; and, in absence of the present moderator, his predecessor in that chair moderates; and, in case of his absence, the eldest minister.

§ 3. There is no constant moderator but in kirk-sessions, where the minister moderates *ex officio*; and if there be colleagues, they moderate by turns. Every presbytery, before they fall about business, chuse one of their brethren to be moderator, who continues for six months, from one provincial synod to another; but the moderators of synods and assemblies are changed at every new synod and assembly. The manner of chusing the moderators of these judicatures is thus: A list is proposed by the former moderator of two or three; which list is ordinarily approved, with the addition of one or two more; out of which list, the candidates having first, by turns, given their voice, and removed, the moderator is chosen by the suffrages of the ministers and elders, and set in the place of the former moderator.

No constant moderator, but in kirk-sessions. The manner of their election.

§ 4. It is the privilege of all the members of any free judicature, to propose a vote, and have it put to the question, provided it be seconded by another member, and that although both the moderator and other members should oppose the motion.

The privilege of members.

TITLE X.

Of Clerks, Readers, and Precentors.

§ 1. EVery judicature of the church is to have a clerk of their own chusing, to record their acts. They are, I think, as free courts as any councils of royal burghs, on whom the imposing a clerk is declared to have been contrary to law, by the meeting of estates 1689. At his admission, he is to give his oath *de fideli*, and continues either during pleasure or life, as they please to make it: But in case neither of these be clearly expressed in his act of admission, then it is to be understood only during pleasure, because all judicatures are still supposed to retain their liberty to dismiss servants when they will, unless a surrender or restriction of that liberty be proven.

A clerk, his election, admission, and continuance.

§ 2. Acts

How far extracts are probative.

§ 2. Acts and deeds under clerks hands are probative writs, and the warrants thereof are presumed; yet so, as if they be recently quarrelled, the warrants must be produced. No wise clerk will give an extract till the minutes of that diet have first been read. The extracts prove what was done by the judge, or what was said or alledged by parties, but they do not prove that the things alledged were true, except in so far as the instructions thereof are expressed. See Stair's Institut. page 688.

A clerk is not to be declined.

§ 3. Albeit clerks be very near of kin to parties, yet considering the knowledge and faithfulness, that in charity is supposed to be in church-judicatures, it may be thought that they will rather over-rule their clerk, than he them; and therefore he cannot be declined. In inferior civil courts, where frequently there is but one judge, and it is known the clerk doth commonly excel him in knowledge, in which case a declinator should be sustained, and another appointed to be clerk to that process in his place, who is not of near kin to the party.

The first rise of readers. They are now ceased.

§ 4. At the beginning of the Reformation, when there was such a scarcity of ministers, and few of the people could either read themselves, or had ever heard the word of God publicly read in their own language; our reformers, in the year 1605, did appoint men to read the Common Prayers and Scriptures, till these churches should be furnished with ministers: but now, seeing there is such an increase of knowledge, and plenty of teachers, there is no public reading of the word, except by such as are licensed, or ordained to preach it, and can help the hearers to understand the meaning thereof.

Precentors, their office.

§ 5. Precentors, or chanters, are they who begin and order the tune of the psalm that is to be sung, and thereby direct the church's music: By the vulgar sort they are yet called readers, though improperly. They are in most congregations clerks to the kirk-sessions; see book II. tit. 1. § 25.

Beddals, their office and qualifications.

§ 6. Beddals, or beedles, are by our judicatures called officers. They are to the church what the *apparitores* were to civil courts, viz. *magistratum ministri, qui eorum jussa exequuntur*, so called, *quia præsto sunt, obsequunturque magistratibus*. At their admission they give their oath *de fideli*, because their executions bear faith. They should be

be perſons of a blameleſs life, and were affected to the church eſtabliſhment, who will not diſcover the ſecrets of the judicature; and they ſhould alſo be ſuch as can read and write.

TITLE XI.

Of Kirk-ſeſſions.

§. 1. ALbeit in a ſeſſion the miniſter is moderator *ex officio*, as hath been ſaid, yet he hath by right no more power thereby than the moderators of other church-judicatures. See the act of the General Aſſembly December 17. 1638, anent voting in kirk-ſeſſions; miniſters moderating therein are not to uſurp a negative voice over the members of his ſeſſion; and where there are two or more miniſters in one congregation, that they have equal power in voting, that one of them hinder not the reaſoning or voting of any thing, being agreeable to the acts and practice of the kirk; and, even in that caſe, voting and reaſoning upon any ſubject can never be hindered, it being inconſiſtent with the liberty of a free court to be impeded or compelled: But the debate may perhaps furniſh ground for a proteſtation or appeal. See tit. 8. § 6. No miniſter muſt uſurp over the ſeſſion.

§ 2. The kirk-ſeſſion conſiſts of one or more miniſters, and of the elders of the congregation; and it is moſt convenient they meet weekly, on a week-day, after ſermon; for, on the Sabbath, matters of civil right, ſuch as diſcharging of the almoner's intromiſſions, ſecuring of money, or ordering of diligence for recovering the ſame, ought not to be treated or concerted by any man, and far leſs by church-guides, whoſe office it is to check that profanity in others. The deacons are always preſent, not for diſcipline, but for what relates to their own office. Ignorant and ſcandalous perſons are to be put off, and kept off from kirk-ſeſſions. See act of Aſſembly, Auguſt 10. 1648. Conſtituents of a ſeſſion, and time of their meeting.

§ 3. The matters treated by them, are what concern church-diſcipline, and the worſhip of God in that congregation, as, what days of the week are meeteſt for aſſembling to public worſhip, and what hour on the Lord's day before and after noon; when it is ſeaſonable for parochial faſts and thankſgivings; what times are fitteſt for catechi- Matters treated by them.

ſing and viſiting of families; how often, and when the Lord's ſupper is to be celebrated. They are likeways to inquire into the knowledge and ſpiritual ſtate of the members of the congregation, whom they are to admoniſh or encourage as they ſee cauſe, and to exclude from the Lord's table all who are found ignorant or ſcandalous.

According to what rule.

§ 4. In the ordering of all which matters, nothing is to be done by them, but what is according to the ſettled order and practice of this church: and if there be any new or difficult emergency that cauſeth doubting or heſitation, the matter is to be referred to the preſbytery, for their direction and authority.

Secret confeſſions not to be propaled, except in what caſes.

§ 5. By the 5th chap. 28th and 30th articles of the French church-diſcipline, conſiſtories ſhall not give certificates to magiſtrates by act or otherwiſe, nor ſhall particular members of conſiſtories diſcover unto any the confeſſions of penitents, which voluntarily, or by admonitions given them, ſhall have confeſſed their faults unto them, except it be in the caſe of treaſon. And as for crimes which ſhall be diſcloſed to miniſters by thoſe who deſire counſel and conſolation, they are injoined not to reveal them to magiſtrates, fearing leaſt blame ſhould be drawn on the miniſtry, and ſinners for the future ſhould be diſcouraged to come to repentance, and make confeſſion of their faults, which ſhall ſtand good in all crimes confeſſed, except it be treaſon. It ſhould be conſidered that none of the reformed churches of France had the happineſs always to have thoſe of their own religion to be their conſtant judges; and the reputation of the Proteſtant religion was not tenderly treated, nor duly regarded, when conſiſtorial delations againſt their brethren were made to Popiſh judges, 1 Cor. vi. 1. "Dare any of you, having a matter againſt "another, go to law before the unjuſt, and not before the "ſaints?" in theſe times, when the church's enemies have power and authority: But now, when the civil judges own the ſame way of God with the church, what ſhould hinder them to inform the magiſtrate againſt delinquents, both to their and others terror.

Privy cenſure in ſeſſions and how to be managed.

§ 6. In every ſeſſion there ought to be twice in the year privy cenſures of the members, clerk, and beddal. The miniſters undergoing their privy cenſures in the preſbytery, are not to undergo them before the ſeſſion. In the managing

naging of this cenſure, the members are one after another to be removed, and then the reſt of the members declare what they have obſerved concerning the converſation of him removed, and of his diligence and prudence in his ſtation. It is to be remembered by all church-judicatures, at their privy cenſures, that no member judicially delate another, unleſs ſecret ſatisfaction hath been ſought and refuſed. After elders, deacons, clerk, and beddal, have paſt their cenſure, each of them, as they are called in, is either to be admoniſhed before all, or others impowered to do it privately; or elſe they are to be encouraged as need requireth.

Seſſion-books to be tried by the presbytery yearly.

§ 7. By the act of Aſſembly Auguſt 19. 1639, the books of kirk-ſeſſions are to be preſented once a year to the preſbytery, that they may be tried by them; or when there is a viſitation of the pariſh by the preſbytery. Aſſembly Auguſt 10. 1648.

Each ſeſſion is to have the acts of Aſſembly read, and to obſerve them.

§ 8. By the act of Aſſembly February 12. 1645, it is recommended to every kirk-ſeſſion, to buy the printed acts of the Aſſembly, and preſbyteries are ordained to crave account thereof, and ſynods are to crave account from preſbyteries. And it is added to this act, by the 18th of the Aſſembly 1705, that the agent for the kirk in all time coming, after every Aſſembly, ſo ſoon as the acts thereof ſhall be printed, tranſmit as many copies of the ſame to every preſbytery as there be pariſhes therein, and both preſbyteries and ſeſſions are ordained, at their firſt meeting after receiving the ſaid acts, to cauſe read ſo many of them as are of public concern, in order to their obſerving thereof; and all this to be upon the charges of the ſeveral preſbyteries and ſeſſions.

The kirk-ſeſſion is ſufficient alone for reformation of manners in a pariſh, having the magiſtrates concurrence.

§ 9. By the 4th article of the 5th chapter of the French church-diſcipline, it ſhall not be permitted to eſtabliſh other council for any church-buſineſs whatſoever; and if in any other church, there ſhall any other council be eſtabliſhed different from the conſiſtory, it ſhall furthwith be ſuppreſſed: Nevertheleſs, the conſiſtory may ſometimes call to its aid ſuch of the church as ſhall be thought convenient, and that the eccleſiaſtical matters be treated of only in the place where the conſiſtory doth aſſemble. They have lately erected in England ſocieties for reformation of manners, not without ſome ſeeming ſucceſs againſt vice and im-

morality, which is commendable and requisite there, until the discipline and government of their church be more pure, and better reformed: But for the church of Scotland, as now established, to imitate that example, beside that it might become an introduction to innovations, it would resemble a vain youth's bringing wide-sleeved coats in fashion, because some persons of quality, who had a distemper in their arms, were necessitated to cause make them wide for their own ease. The author of the Stage condemned, page 45. proves stage-plays to be condemned in scripture by this argument, that which God hath appointed sufficient means to accomplish, it is unlawful for men to appoint other means to accomplish it. But God hath appointed sufficient means for recommending virtue and discountenancing vice, without the stage: *Ergo*, it is unlawful for men to appoint the stage for recommending virtue and discountenancing vice. And the same argument, *mutatis mutandis*, militates against these new lay-societies for reformation of manners in the church.

TITLE XII.

Of Presbyteries.

The constituents of a presbytery, their quorum, and time of meeting.

§ 1. THIS judicature consists of all the pastors within the bounds, and one ruling elder from each parish therein, who receives a commission from the eldership to be a member of the presbytery, and represent them there till the next synod be over: Thus twice a year there are new elections of the ruling elders. The number of parishes associated in presbyteries, for their mutual help, is determined by authority of the national synod, December 17. 18. 1638, article 8. as the adjacency of the congregations, and the easiness of travelling doth best allow. Where there are collegiate ministers, that session may send as many ruling elders. The directory for government saith, That to perform any classical act of government or ordination, there shall be present, at least, a major part of the ministers of the whole *classis*. Presbyteries should meet every third week, and oftner, if business require it: But of this see § 3. of this title.

§ 2. Every

§ 2. Every meeting of a presbytery is to begin with a sermon by one of the brethren appointed formerly for that effect, upon a text assigned him by them, except when probationers or intrants supply the pulpit in their public trials. The half of the time allowed for this presbyterial exercise is to be taken up in the explicatory and analytic part of the text, and in answering textual and critical questions and difficulties; this part of the work is called *making*, and requires more especially the gift of the doctor. The other half of the time allowed is to be taken up in raising of doctrines and observations from the text, and applying them in their several uses; which last part is called *adding*, and it requires more especially the gift, and necessarily the authority of the pastor. After the exercise is over, and the presbytery constitute, the censure of the exercise they have heard useth always to be their first work, which may be done before them who had the exercise. Beside this, the brethren of the presbytery, by the act of Assembly December 17. 18. 1638, are to have some common head of doctrine publicly disputed in the presbytery among the brethren, every first presbytery of the month, according to the act of Assembly holden at Dundee 1598, sess. 12. Presbyterial exercises and common head

§ 3. By the foresaid act 1638, presbyterial meetings are to be weekly, except in places far distant, who, between the 1st of October and 1st of April, are dispensed with for meeting once in the fourteen days. See § 1. tit. 12. Likewise that act appoints all absents to he censured, especially those that should exercise and add, according to the act of Assembly April 24. 1582. Absents to be censured.

§ 4. The presbytery treats of such matters as concern the particular churches within their bounds, as the examination, admission, ordination, and censuring of ministers; the licensing of probationers, rebuking of gross or contumacious sinners; the directing of the censure of excommunication; the cognoscing upon references and appeals from kirk-sessions; the revising and rectifying what hath been ill done or negligently omitted by them, at their approving of the kirk-session books and records; the answering of questions, cases of conscience, and solving of difficulties in doctrine or discipline, with petitions from their own or those in other presbyteries; the examining and censuring according Matters treated of in presbyteries.

cording to the word of God, any erroneous doctrine, which hath been publickly or more privately vented within their bounds, and the endeavouring the reducing and converſion of any that remain in error and ſchiſm; the appointing of viſitation of churches by themſelves as occaſion offers, or the perambulation of pariſhes, in order to their uniting or disjoining; all which are either concluded or continued to further conſideration, or referred to the ſynod.

Proceſſes that begin, but cannot be determined by the ſeſſion, but referred to the preſbytery, as the judges competent.

§ 5. By chap. 6. act 11. of Aſſembly 1707, there are ſome proceſſes which natively begin at the kirk-ſeſſion, but for the atrocity of the ſcandal, or difficulty in the affair, or general concern, the ſeſſion having frequent meetings of the preſbytery to have recourſe unto, do not determine of themſelves; ſuch as, ſcandals of inceſt, adultery, trilapſe in fornication, murder, atheiſm, idolatry, witchcraft, charming, hereſy and error vented and made public by any in the congregation, ſchiſm and ſeparation from the public ordinances, proceſſes in order to the higheſt cenſure, and continued contumacy. But proceſſes for all ſuch crimes and ſcandals, are to be referred to the preſbytery, by an extract of their procedure thereanent. And when there is no confeſſion of the ſcandals above-mentioned, the ſeſſion is not ſo much as to proceed to lead probation by witneſſes or preſumptions, till they be authorized thereto by the preſbytery's anſwer to their reference foreſaid.

When the ſeſſion may cite a perſon to the preſbytery.

§ 6. When the proceſs is ſo clear, as in the caſe of a judicial confeſſion, then the kirk-ſeſſion may ſummon the delinquent, when before them *apud acta*, to compear before the preſbytery: but where there is any difficulty, they ſhould firſt inform the preſbytery, and get their allowance before the party be ſummoned before them.

Seſſions cannot abſolve from ſuch ſcandals without the preſbytery.

§ 7. When perſons cenſured for theſe groſſer ſcandals do apply to the kirk-ſeſſion for relaxation, they may both be privately conferred with, and likewiſe their acknowledgements heard before the ſeſſion, but they ought not to be brought before the congregation, in order to their abſolution, nor abſolved but by direction and order of the preſbytery.

Correſpondence of preſbyteries.

§ 8. Preſbyteries in ſome caſes may ſend commiſſioners to other preſbyteries, either to adviſe them, or to ſeek advice from them. By act of Aſſembly June 18. 1646, it

is

is recommended, that a correſpondence be kept among preſbyteries conſtantly by letters, whereby they may be mutually aſſiſting to each other.

§ 9 In every preſbytery, at leaſt twice a year, on days for prayer, as ſhould be done in ſeſſions likewiſe, before each ſynod, there ought to be privy cenſures, whereby each miniſter is removed by courſe, and then inquiry is made at the paſtors and elders, if there be any known ſcandal, fault, or negligence in him, that it may be in a brotherly manner cenſured; after the miniſters, the preſbytery clerk is to paſs theſe cenſures likewiſe. By the 6th article of the 7th chapter of the French church diſcipline, at the end of the colloquies, amicable and brotherly cenſures ſhall be made, as well by the paſtors as by the elders, which ſhall be there preſent, of all things which ſhall be thought fit to be repreſented unto them.

Privy cenſures in preſbyteries, their ſeaſon upon days of prayer.

TITLE XIII.

Of Parochial Viſitations by the Presbytery.

§ 1. PAriſhes are viſited by preſbyteries, either occaſionally, *pro re nata*, according to the weight of the emergent which doth require the viſitation, or ordinarily and in courſe, whereby every congregational church is viſited once a year, Aſſem. 1638. ſeſſ. 23. 24. art. 3. at leaſt, this ordinary viſitation ſhould be going round all the pariſhes in order till they be viſited, before others be reviſited in ordinary; for by the 16th act of Aſſembly 1706, preſbyterial viſitations of pariſhes are to be frequent.

Viſitations occaſional or ordinary.

§ 2. The preſbytery is to cauſe intimation to be made of their appointed day for the viſitation of that pariſh, by a brother of another congregation, from the pulpit, immediately after the forenoon's ſermon, on the Sabbath, ten days preceding the day for the viſitation, requiring the miniſter of the pariſh to preach at that time and place on his ordinary text, and ſummoning the heritors, elders, and whole congregation, to be preſent that day, to hear ſermon; and thereafter, that the miniſter, heritors, elders, and heads of families, do attend the preſbytery, to acquaint them with the ſtate of that kirk and congregation in every point; and if any of them have certain knowledge of any thing

How the day for the viſitation is to be intimated.

thing amiss in their minister, elders, deacons, precenter, session-clerk, schoolmaster, or beddal, that they do then acquaint the presbytery therewith.

The minister's library, and session register, to be seen and revised.

§ 3. The session registers, together with a catalogue of the minister's books, are to be produced to the presbytery, before the visitation, and given to two of the fittest brethren, and best acquainted with that minister and people, to be seen and revised; and they to report at the visitation.

Preliminaries to the visitation; and how the elders are to be interrogate.

§ 4. Sermon being ended, and the presbytery constituted, the minister's doctrine he had in his sermon, is first to be considered, as in the presbyterial exercise, then the church Bible, Confession of Faith, Acts of the General Assemblies, acts and proclamations against profaneness, and other acts and papers relative to the church, are all to be called for and produced before the presbytery. The visitors of the session's registers, and minister's liberary, are to make their report. The presbytery, at the entry on the visitation, having removed the minister, are to cause read over their actings at the last visitation, and see if what was then recommended or ordered hath been made effectual, and take the excuses of absent elders and deacons therefrom; and, if need be, to call in any party for information. If nothing arise from that, to divert the presbytery from the orderly method, all parties being removed, the presbytery is to call in the session one by one, and to enquire them concerning their minister: yea further, by the act of Assembly June 13. 1646, at visitation of kirks, the elders, one by one, the rest being removed, are to be called in, and examined upon oath concerning the minister's behaviour.

Ministers families to be interrogate concerning their lives.

§ 5. By the act of Assembly 1590, ratified December 17. 18. 1638, at visitation of kirks, the families of ministers are to give an account, and to be tried concerning the good order and behaviour that they observe within their families; and such as are found neglectors of family-worship, or instructing of all in their families, or such as remove not those who are offensive therefrom, shall, after due admonition, be judged unfit to rule the house of God; for he ought to be one that ruleth well his own house, 1 Tim. iii. 4.

Kirk-sessions interrogate concerning their pastor.

§ 6. The questions to be inquired by a presbytery at the eldership concerning a minister may be these, and such like: 1. Hath your minister a gospel walk and conversa-

tion

tion before the people? And doth he keep family-worſhip? And is he one who rules well his own houſe? Is he a haunter of ale-houſes and taverns? Is he a dancer, carder, or dicer? Is he proud or vain-glorious? Is he greedy, or worldly, or an uſurer? Is he contentious, a brawler, fighter, or ſtriker? Is he a ſwearer of ſmall or minced oaths? Uſeth he to ſay, Before God it is ſo; or, in his common conference, I proteſt, or, I proteſt before God? Or, ſays he, Lord, what is that? All which are more than yea and nay? Is he a filthy ſpeaker or jeſter? Bears he familiar company with diſaffected, profane, or ſcandalous perſons? Is he diſſolute, prodigal, light, or looſe in his carriage, apparel, or words? How ſpends he the Sabbath after ſermon? Saw ye him ever drink healths? Is he at variance with any? Is there any that reproaches him? Or, is he well beloved of all? And upon what ground is it that the variance or good liking of the people is?—2. Keeps he much at home at his miniſterial work? Or, doth he occaſion to himſelf diſtractions and unneceſſary diverſions therefrom? Is he conſtant at his calling and ſtudies, or takes he but pains at fits and ſtarts, ſuch as at faſts, communions, viſitations, &c.? Is Saturday only his book-day, or is he conſtantly at his calling?—3. Doth he diſcountenance or diſcourage any that is ſeeking Chriſt? Doth he preach ſound doctrine, ſo far as ye can underſtand? Doth he preach plainly, or is he hard to be underſtood for his ſcholaſtic terms, matter, or manner of preaching? Doth he faithfully reprove ſin, eſpecially ſuch as moſt prevail in the pariſh? What time of day doth he ordinarily begin ſermon on the Sabbath? And when doth he diſmiſs the people? Spends he too much time in his ſermon, in repetition of what he ſaid before? Doth he lecture and preach in the forenoon, and preach again in the afternoon on the Lord's day, and that both ſummer and winter? Doth he read a large portion of ſcripture in public, and expound the ſame? Doth he preach chatechetic doctrine ordinarily in the afternoon? Hath he a week day's ſermon, and collections on theſe days? When the Lord in his providence is ſpeaking extraordinary things, doth he tie himſelf to his ordinary text; or makes he choice of one more appoſite and ſuitable to the diſpenſation? Seeks he to preach Chriſt his beauty and excellency, and to open up

the power and life of godlineſs? Endeavours he to diſcuſs caſes of conſcience, to let you know your ſpiritual ſtate, what it is?—4. Doth he, according to the act of Aſſembly 1708, viſit the people and families, at leaſt once a year in a miniſterial way, teaching and admoniſhing from houſe to houſe? And doth he viſit the ſick when needful, and pray over them? Doth he viſit them who, through age or ſickneſs, cannot come to the public worſhip? Doth he labour to ſpeak to the ſick ſuitably to their various inward conditions? Doth he not eſpecially viſit ſuch as be exerciſed in conſcience? Doth he viſit ſuch as are afflicted by death of children or other relations? Viſits he the widows, orphans, and poor? If he be miniſter of a burgh, viſits he the priſoners? Is he not careful when he viſits families to confer with them in private, and pray with them, thereby learning the caſe of their ſouls, that ſo the doctrine in public may the better meet with their condition?—5. Doth he adminiſter the ſacrament of baptiſm in an orderly way, when the congregation is convened; or doth he it at any time privately? Doth he add any word to, or alter the words of inſtitution?—6. Doth he frequently catechiſe his pariſhioners, and adminiſter the ſacrament of the Lord's ſupper to them? And is he careful in keeping from that holy ordinance all who are known to be ſcandalous, groſsly ignorant, or erroneous? How often have ye the communion every year? Doth he not begin to catechiſe young ones about nine or ten years of age, and how cenſures he contemners of catechiſing? What courſe is taken with contemners of the Lord's ſupper upon frivolous pretences? At the Lord's ſupper doth he not cauſe cut the bread in large and fair ſhaves fit for mutual fraction and diſtribution, that as they give the cup to the neareſt aſſident, ſo having broken off a part of the bread with their hand for themſelves, they give the reſt to the perſon ſitting neareſt them? Do your people all ſit at the Lord's table? In the time of diſtribution, eating, and drinking, is there any reading, or ſinging of pſalms, or is there ſilence, and ſo time for meditation, except it be a ſhort, pertinent, and awakening word dropped by the paſtor?—7. Hath he a competent number of elders? And hath he deacons in the pariſh diſtinct from elders? Doth he keep ſeſſional meetings frequently? And is he impartial

in

n the exercise of discipline against all offenders? Is there frequent meetings of the members of session, for fasting and prayer, according to the act of Assembly 1699? Doth he travel with public penitents in private, to make them sensible of their sin, according to its circumstances, and sensible of mercy, that the love of Christ may overcome the love of sin? And then doth he absolve them, when brought up to some ingenuous confession and resolution for the future? Doth he ever censure persons for living idle, breaking of promise, or for backbiting? Doth he censure keepers of superstitious days? How doth he restrain abuses at penny-bridals? Doth your session meet weekly? Doth your minister coolzie any whom another brother hath in process? Or doth he carry any way partially, that so he may become popular? Doth he in session assume to himself a negative voice? When he is necessitated to leave his flock, doth he not acquaint the session with it?—8. Is he careful to take away variances that fall out among families, and compose differences among particular persons in the congregation?

Pastor and heads of families interrogate concerning the kirk-session.

§ 7. After that the elders have answered to these or the like questions, then the heads of families are to be interrogate in general concerning the lives and manners of the members of the session; and the pastor is to answer more particularly to these or the like questions: 1. Is your session rightly constitute, and all the elders and deacons duly admitted according to the acts of the Assembly? 2. Do they all attend gospel-ordinances, and the diets of the session? 3. Are they grave, pious, and exemplary in their lives and conversations? Do they worship God in their families? Is any of your elders an ignorant man, a drinker of healths, a tipler, a drinker excessively to drunkenness, a swearer, an observer of Yule-days, &c? Is he one that observes not the Sabbath? Is he careful to keep his oath of admission taken before God in face of the congregation, not to delate or censure, but as edification requires? Do any of them work on solemn fast or thanksgiving days? Is any of them a mocker of piety? 4. Are they diligent, careful, and impartial in the exercise of their offices? Do the elders visit the families within the quarter and bounds assigned to each of them? Are they careful to have the worship of God set up in the families of their bounds?

Are they careful in calling for teſtimonials from perſons who come to reſide in the pariſh? Do the elders take all diſcipline upon themſelves without the miniſter? Or do they labour to carry things factiouſly, or by plurality of voices, contrary to God's word, and the laudable acts of the presbytery, provincial, or General Aſſemblies? 5. Have the elders ſubſcribed the Confeſſion of Faith? And are they well affected to the government, worſhip, and diſcipline of this church? 6. Have the elders and deacons their diſtinct bounds aſſigned them for their particular inſpection? 7 Does your ſeſſion always appoint a ruling elder to attend presbyteries and ſynods? 8. Are the deacons faithful in their office, in collecting and diſtributing all the kirk-goods, and in having a care of the ſick poor? After all theſe queries are over, the miniſter and elders are to be ſeverally encouraged or admoniſhed as the presbytery ſees need.

The precentor, beadle, &c.

§ 8. Then the precentor, ſchoolmaſter, and clerk of the ſeſſion, who in country congregations are ordinarily one and the ſame, and after them the beadles, bell-men, and church ſervants, being removed, the presbytery is to inquire at the miniſter, ſeſſion, and heads of families, concerning their converſation, fidelity, and diligence, in their offices; and the presbytery is thereupon to proceed as the matter requires.

Paſtor and elders interrogate concerning the congregation

§ 9. After all theſe inquiries, the presbytery removing the heads of families, the miniſter and elders are to be inquired concerning the congregation, 1. Doth the body of the people attend ordinances duly and timeouſly, and ſtay till the bleſſing be pronounced? Are they diligent in improving the means of knowledge, and are they growing therein? 2. Are they ſubmiſſive to public and private exhortations, and to the diſcipline and cenſure of the church, by admonitions and reproofs, as need requires? And do they by their words and actions manifeſt a ſuitable reſpect to their miniſter and reſpective elders? 3. Are they careful to educate their children and ſervants in the knowledge of God? What ſucceſs hath the goſpel and labours of miniſters and elders among them? What ſcandals, ſchiſms, hereſies, or diviſions are among them, and if on the growing hand? How doth they obſerve the Lord's day?

§ 10. The

§. 10. Then the miniſter, heritors, ſeſſion, and heads of families, being preſent, the presbytery is to inquire after the ſtate of the church, as to its fabric, the ſeats therein, and diviſion of the ſame, the church-yard dikes, the utenſils of the church, communion cups, cloaths, the miniſter's manſe, if it be in repair, the glebe and ſtipend, the ſalary of the ſchoolmaſter, precentor, ſeſſion-clerk, and beadles, and how the communion-elements are provided, whether they be paid for out of the poor's money, and that when the communion is but celebrated once a year? See lib. II. tit 2. § 24. Inquiry is to be made how much the ſtipend is? of what nature? how paid? and if there be a decreet of locality for it? As alſo about the ſtate of the poor, whether there be any mortifications and legacies for them, or other pious uſes? and how theſe are ſecured, and their intereſt paid and applied, and how they have been managed and employed from time to time? ſeſſ. 18. Aſſemb 1700. After the viſitation is over, all parties are to be called in, and the moderator is to conclude all with prayer.

Paſtor, kirk-ſeſſion, and heads of families, interrogate about things of common concern.

TITLE XIV.

Of Provincial Synods.

§ 1. THE ſynod or provincial aſſembly is immediately ſuperior to the preſbytery, and conſiſts of ſeveral preſbyteries met together for their mutual help and comfort, and for managing the affairs of public concern within their bounds. The number of preſbyteries in each ſynod is determined by the national Aſſembly, and they meet ordinarily twice every year, and at ſuch ſet times as the neighbouring ſynods may conveniently correſpond one with another, which is done by ſending a miniſter and ruling elder mutually from one to another, viz. the provincials of Lothian, Merſe, &c.; the provincials of Dumfries, Galloway, Glaſgow, and Argyle; the provincials of Perth, Fife, and Angus, &c.; the provincials of Aberdeen and Murray; the provincials of Roſs, Caithneſs, and Orkney. See likewiſe the order of the provincial aſſemblies in Scotland, according to the preſbyteries therein contained in the act of Aſſembly, December 17. 18. 1638, act 24.

The conſtituents of a ſynod, their time of meeting, &c.

§ 2. The

Synod opened, rolls made up, moderator chosen, and correspondence inrolled.

§ 2. The moderator of the former synod doth, in the morning before the meeting, preach a sermon suited to the occasion, and after sermon doth intimate to the members, that they immediately repair to the synod-house; when they are met, he doth open the meeting with solemn prayer: then the clerk having made up the synod roll from the rolls of each presbytery presented to him by their respective moderators, he is to call the same over, and to mark the absents. In making up the synod roll, it is usual to change the order thereof every synod, so that the presbytery that was first called in the roll of the former synod is now called last. Then the synod proceeds to the choice of a new moderator, who first calls for the correspondents from the neighbouring synods: and their commissions being read, they are inrolled as correspondents.

Committees of synods, their work, use, and power.

§ 3. Committees are to prepare matters, and to lop off unnecessary work for gaining of time, and to hinder heats by public debates, and to facilitate their work, they may subcommit any part thereof to a few of their own number; and they may likewise advise one with another in weighty affairs, even before report to the synod, thereby the more to prevent debates. Any affair tabled before them, though by them rejected, may be brought in in full synod; yet so as the member or party who bringeth in the matter, be sure to have very much reason or necessity for so doing. All synods may have the following committees. 1. A committee for overtures; 2. Another for bills, references, and appeals; and, 3. For revising presbytery-books, who are to meet at such times and places as the synod appoints: each committee and sub-committee is to consist of ministers and ruling elders: the moderator and clerk of the synod is moderator and clerk to the committee of overtures. All other committees chuse their own moderator and clerk, who is to present their report to the synod in writing. Any member of a judicature may be present with the committee though none of the number, and may advise, but not vote there: as also, one of a committee may be present in sub-committees of their own appointment; all which committees are chosen by the synod only, as General Assemblies do theirs.

§ 4. The presbytery-books are called for and produced,

ced, and each book is committed to some members of other presbyteries to be revised and examined by them, that it may appear how each presbytery hath keep order, and performed what was recommended to them by synods or General Assemblies; and upon the revisers their report, they are censured or approved accordingly. What was obscure or difficult for the presbyteries, or might concern them all in common, is resolved and ordered; what hath been done amiss by presbyteries is redressed: and if any difficulty arise which doth not fall under some church-constitution, it is referred to the national Assembly

Matters treated by synods.

§ 5. Every presbytery is to get an extract of the acts of every synod, and to read such of them in the presbytery as are of general concern, or which particularly relate to any in their bounds, that they may be the better observed.

Presbyteries are to carry home and read synod acts.

§ 6. At the privy censures, none ought to be present but members. Upon the revisers their report of the presbytery-books, each presbytery is removed *per vices*, in order to privy censure, in the same manner as was said of the ministers in presbyteries, and of elders in sessions. See tit. 15. § 1.

Privy censures by synods.

§ 7. By article 12. chap 8. of the French church-discipline, concerning provincial synods, the pastors in each province shall represent the widows and children of ministers which died in the service of the church, to be supported and maintained at the common charge of each province; and where the province shall be ingrateful, the national synod shall redress it. Our church proposeth the same persons as proper objects for the pastors in the synods their charity, and the *centesima* or hundredth part of each benefice to be the fund, and paid in to the collector thereof yearly, who is to be appointed by each synod, and is to distribute the same to the relicts, and children of deceased ministers within the bounds of the synod, conform to their order.

Centesima to ministers widows and children.

TITLE

TITLE XV.

Of Extraordinary Synods and General Assemblies.

Extraordinary synods only to be held in a disturbed state of the church.

§ 1. EXtraordinary synods I call such as that of the Assembly at Westminster, which consisted of divines and gentlemen, many of whom were not elders, called and nominated by the civil power to consult about the doctrine, worship, and government of the church: or, when ministers, without delegation from the church, do of themselves meet by virtue of their office: Which synods this church doth not approve of in a settled and constitute condition, but only in such churches as are not yet constituted. It being always free to the magistrate to advise with synods of ministers and ruling elders, meeting upon delegation from their churches, either ordinarily or being indicted by his authority occasionally. See the act of Assembly 1647, approving the Confession of Faith Yet by act of Assembly December 19. 1638, ministers are obliged to give their advice and good counsel in matters concerning the kirk, or the conscience of any whatsoever, to his Majesty, to the parliament, to the council, or to any members thereof, for their resolutions from the word of God.

Members of a national assembly by the directory should be as many ministers at least as ruling elders.

§ 2. By the directory for church-government, as it was printed in the year 1647, to be examined by presbyteries, the Assembly was to consist of as many ruling elders as ministers, which doth agree with the chap. 9. art. 3. of the French church-discipline: but by the directions of the English parliament, August 19. 1647, it is provided, That there be in all Assemblies two ruling-elders to one minister. It seems indeed but reasonable, when presbyteries, the constituents of General Assemblies, do consist of ministers and ruling elders equally, that they should be equally represented there likewise

The nature of our first General Assembly after the Reformation.

§ 3. At the beginning of our Reformation, the Assembly did consist of these of the reformed religion, delegated from some shires and burghs where the reformed dwelt. The number of pastors was then so small, that it did not exceed the fourth part of the meeting, as may be seen from their sederunts in the copy of the M. S. acts of

of Aſſemblies: and until the number of miniſters did increaſe and multiply, it was at firſt a general meeting of them all; but thereafter they did impower and commiſſion a few to repreſent them, who are thereupon only deſigned *the Commiſſioners of the General Aſſembly*.

What may annul a General Aſſembly.

§ 4. If an Aſſembly be indicted by the civil magiſtrate on ſo ſhort an advertiſement as twenty days, that presbyteries (eſpecially the more remote) are not timeouſly advertiſed to chuſe commiſſioners, and ſo the church not fully repreſented, an Aſſembly ſo meeting is declared null. All new Scots parliaments were called on forty days, and what prejudice can it do if presbyteries receive as fair an advertiſement, unleſs it be to the ſervice of ſome preſent deſign againſt the church? *2do*, An Aſſembly is null where the members, or a great many of them, are not elected by presbyteries, but named by the magiſtrate; in which caſe, though they may act as adviſers of the magiſtrate, yet they cannot act as theſe having authority from the church. *3tio*, An Aſſembly is null, when presbyteries are repreſented by more miniſters than the ſtanding acts of Aſſemblies, regulating the repreſentation, doth allow, or where no ruling elders are commiſſioned. *4to*, An Aſſembly is null, when members do vote for theſe matters, to which they are threatened to give their vote, by the civil magiſtrate. *5to*, An Aſſembly is null, when a moderator or clerk is impoſed upon them without their ſuffrage: ſee at length acts of Aſſembly, December 4. 1648.

Aſſemblies may meet yearly, and oftner, *pro re nata*.

§ 5. The General Aſſembly December 20. 1638, declares, that by divine, eccleſiaſtical, and civil warrant, the Aſſembly of this national church hath power and liberty to aſſemble and convene in her yearly General Aſſemblies, and oftener, *pro re nata*, as occaſion and neceſſity ſhall require: To this agrees the act of parliament 1690, ratifying the Confeſſion of Faith, and ſettling Presbyterial church-government; ſo that the Sovereign, till theſe laws be altered, cannot, by his mere authority or proclamation, render the meetings of Aſſemblies precarious and uncertain, unleſs he run the riſk of renewing the diſpenſing power.

The repreſentation in General Aſſemblies, and the number of members.

§ 6. By the 5th act of Aſſembly 1694, the repreſentation of the ſeveral presbyteries in this national church

in its General Aſſemblies, ſhall hold proportion to the number of pariſhes, whether vacant or planted, within each presbytery, in manner following: All presbyteries conſiſting of twelve pariſhes, or under that number, ſhall ſend two miniſters and one ruling elder. And all presbyteries conſiſting of eighteen pariſhes, or under that number, but above twelve, ſhall ſend three miniſters and one ruling elder. And all presbyteries conſiſting of twenty-four pariſhes, or under that number, but above eighteen, ſhall ſend four miniſters and two ruling elders And, lastly, All presbyteries conſiſting of above twenty-four pariſhes, ſhall ſend five miniſters and two ruling elders. And every collegiate church where there uſe to be two or more miniſters, are, ſo far as concerns the deſign of this act, underſtood to be as many diſtinct pariſhes: So that preſbyteries delegate not leſs than a ſixth part, nor more than a fifth part of the miniſtry. Conform to the repreſentation proportioned by this act, the number of miniſters delegate from presbyteries are one hundred and eighty, and of ruling elders ſixty-eight. But each royal burgh having the privilege (if they pleaſe to uſe it) to be repreſented there by a ruling elder, and the city of Edinburgh by two, this would add ſixty-ſeven more ruling elders to that order, making in all of elders one hundred and thirty-five. By that ſame act, no perſons ſhall be admitted members of Aſſemblies, but ſuch as are either miniſters or ruling elders. And by the 6th act of Aſſembly 1698, it is recommended to presbyteries to chuſe only ſuch ruling elders as may and will give attendance.

There ſhould be no delegations but from preſbyteries only.

§ 7. Commiſſioners from royal burghs, till the matter be further thought upon, by the act of Aſſembly July 15. 1648, are to obſerve the ordinary practice, viz. that each burgh ſend one, and Edinburgh ſend two ruling elders, approven of and conſented to by the miniſtry and ſeſſion of the burgh: but yet each univerſity may be repreſented by a miniſter or ruling elder. Neither is that kind of approbation of the choice required, albeit there may be the ſame reaſon for it: For the members of a faculty, as ſuch, are not obliged to be either miniſters or ruling elders. But, upon the whole, our practice would be more eaſily accounted for, and a great deal more agreeable to that of foreign churches,

churches, if delegations were only from presbyteries, and the delegates equally both of miniſters and elders.

§ 8. By the 6th act of Aſſembly 1704, no miniſter or elder can be commiſſioned to the General Aſſembly by any presbytery, burgh, or univerſity, but ſuch as uſually reſide in, or have a relation to the presbytery, burgh, or univerſity they are commiſſioned from. This is enacted, that pragmatic and deſigning men may be kept out from being members of Aſſemblies, after their own presbyteries, &c. (perhaps from ſome ſuch apprehenſion) had been pleaſed to neglect them in their choice. All commiſſioners muſt reſide, or have relation to the bounds they repreſent.

§ 9. The Aſſembly, by their act the 6th of Auguſt 1641, conſidering, that if the Scots kirk at Campvere were joined as a member of the kirk of Scotland, it would be convenient for correſpondence from foreign parts for the weil of this kirk: therefore they deſired the ſaid kirk of Campvere to ſend their miniſter with a ruling elder, with their commiſſion to the next General Aſſembly, at which time they ſhould be inrolled as commiſſioners from that kirk. When that church is vacant, the convention of royal burrows have been in uſe to preſent a miniſter, and act as patrons. And by the act of Aſſembly 1704, ſome propoſitions concerning the ſaid kirk, approved by the Aſſembly 1642, are of new enacted and authoriſed, viz (1) That the ſaid kirk obſerve that order in the outward worſhip of God, and exerciſe of diſcipline, as is here received by law and practice. (2.) That, at leaſt, every third year their commiſſioners be at the Aſſembly, whoſe expences are to be paid by their own kirk, till this church be in a better capacity to do it. (3.) That they adviſe with the presbytery of Edinburgh, or commiſſion of Aſſembly, concerning emergent difficulties. The Scots kirk at Campvere repreſented. Their inſtructions, &c.

§ 10. By the act of Aſſembly 1638, December 17. 18. it is referred to particular presbyteries, and eſpecially to the ruling elders therein, that commiſſioners to Aſſemblies their expences be borne conform to former acts of Aſſemblies, by the particular pariſhes in every presbytery, and proportionally, by all ſorts of perſons therein, able in land or money: which act is ratified by the Aſſembly 1639, Auguſt 29. and extended to the expences bearing of ſuch as ſhall be ſent in commiſſion by General Aſſemblies: but it is referred to the parliament for making theſe Commiſſioners to and from Aſſemblies. Their expences.

who are ſtented to pay their proportions: by which it is clear that presbyteries may ſtent the people within their own bounds, for defraying the charges of thoſe therein, who attend General Aſſemblies: but then it muſt not be exacted, but only received from a willing condeſcending people, which will certainly be very unſerviceable, if otherwiſe received, unleſs the expences be moſt inconſiderable. And the practice might prove more ſerviceable in a diſturbed ſtate of the church, when miniſters come to be deprived of their ſtipends. Since the year 1642, our ſovereigns have beſtowed four or five hundred pounds ſterling yearly, to be employed by General Aſſemblies, which will do much to defray the expences of commiſſions from General Aſſemblies, ſent to viſit the remoter parts of the church; ſee Aſſ. 1642, Auguſt 5.

The ſtile of commiſſions to General Aſſemblies.

§ 11. The General Aſſembly, by their 8th act 1695, gives the form after inſert for a directory to presbyteries in their giving commiſſions to their members for General Aſſemblies; which form is likewiſe obſerved by univerſities, each whereof ſends one, as alſo royal burghs, *mutatis mutandis*. At the day of years. The which day the presbytery of did, and hereby does nominate and appoint Mr. A. B. miniſter at C. Mr D. F. miniſter at F. and ruling elders, their commiſſioners to the next General Aſſembly of this church, indicted to meet at the day of next to come, or when or where it ſhall happen to ſit, willing them to repair thereto, and attend at all the diets of the ſame, and there to conſult, vote, and determine in all matters that come before them, to the glory of God, and good of his church, according to the word of God, the Confeſſion of Faith, and agreeable to the conſtitutions of this church, as they will be anſwerable, and that they report their diligence therein at their return therefrom. Extracted by me, &c. And by the 6th act of Aſſembly 1704, this clauſe muſt be inſert and added to the ſaid form of all commiſſions, viz. that they have ſubſcribed the Confeſſion of Faith of this church, according to the 11th act of the General Aſſembly anno 1700.

The reaſon for this uniformity.

§ 12. The reaſon for enacting this uniform method was, that all members might be alike free: for before this time ſeveral preſbyteries did inſert in their commiſſions

particular

particular instructions and limitations, which did not a little muzzle and confuse the members, and might at some occasions have proved an advantageous handle for such as were not tender of the church's peace.

When commissions are to be given in.

§ 13. By the 4th act of Assembly 1694, commissioners from presbyteries and others are appointed to give in their respective commissions to the clerk of the General Assembly, the night at least before the first diet or meeting thereof, to the effect the rolls may be timeously made up, and that the commissions may be considered by the Assembly without any interruption: and all commissions not so given in, shall be delivered in the intervals, betwixt and the after diets.

Commissioners are to be elected forty days before they meet, and why.

§ 14. By the 6th act of Assembly 1698, presbyteries are appointed to chuse their commissioners to General Assemblies at least forty days before the sitting thereof: that which gave rise to this act was, that the civil authority, for some time before that, had been pleased (though not agreeably to the act of parliament 1690, in favours of the church) to interpose a privative power in adjourning General Assemblies to a longer time than the appointment of the preceeding Assembly, whereby their meetings were rendered both unfrequent and uncertain: and with some view to obviate this, I think, the act hath been made, but yet especially that members might be in case to attend, being so long chosen before the time.

The Sovereign, or his commissioner, honours the Assembly by their presence, which, though acceptable, yet is not essential to an Assembly.

§ 15. The General Assembly useth to be honoured with the Sovereign's presence, either by their royal person, or by their High Commissioner: for which the moderator, in the Assembly's name, doth use to express their thankfulness, and how great a mercy they do esteem it to have the countenance of civil authority. But there have been many General Assemblies begun, held, and continued in Scotland, without either the King or his Commissioner's presence: and that it was not, nor yet is contrary to law, is evident, if the first act of parliament 1592, ratified in parliament 1690, be duely considered.

The first commission was the king's missive.

§ 16. The first commission that was granted, was by King James VI. anno 1580, as may be seen in an old M. S. of the acts of Assemblies, and was nothing else but a missive letter under the King's own hand, the tenor whereof follows: "Trusty and well beloved friends, we greet

"you

" you well. We have directed towards you our truſty " friends the Prior of Pittenweem, and the Laird of Lun- " die, intruſted with our power for that effect, for aſſiſt- " ing you with their preſence and counſel in all things " that they may, tending to the glory of God, and pre- " ſervation of us and our eſtate; deſiring you heartily ac- " cept them, and our good will committed to them for the " preſent in good part. Sua we recommend you to God's " bleſſed protection. From our palace at Falkland, the 22d " day of July 1580. JAMES R "

The form now is more ſolemn.

§ 17. But now theſe commiſſions are more pompous and ſolemn, paſſing in Latin under the great ſeal. Sometimes they have been complex, cloathing the commiſſioners with ſomewhat of a viceroyſhip in the ſtate, as well as commiſſioner to the Aſſembly: thus it is ſaid the Marquis of Hamilton, and Earl of Traquair, their commiſſions were in the years 1638, and 1639. The commiſſions granted ſince the revolution, you may ſee in the printed acts of Aſſemblies. Though theſe commiſſioners be reſpected in the Aſſemblies, and about Aſſembly-affairs, as repreſenting the Sovereign's perſon; yet I doubt if they could claim any place or precedency in meetings of ſtate, meerly as commiſſioners to the Aſſembly. But this is ſtill kept undecided, as appears by their diſappearing at ſuch meetings while the General Aſſembly is ſitting.

Preſbytery of Darien repreſented.

§ 18. The preſbytery of Caledonia in Darien is authoriſed to ſend yearly two repreſentatives to the General Aſſembly: they being a part of this national church, and ſubject to her Aſſemblies, as appears from the inſtructions given them by the commiſſion of the General Aſſembly 1699.

The opening of the Aſſembly.

§ 19. The moderator of the former Aſſembly opens it with a ſermon; but in caſe of his abſence, his predeceſſor in that chair hath the ſermon: and in abſence of them both, the eldeſt miniſter of the town where they meet preacheth, and openeth the Aſſembly by prayer, and moderates till a new moderator be choſen. Thus it was done in the Aſſembly at Glaſgow 1638. After ſermon the members go into the Aſſembly-houſe, where, after prayer by him who preached, a new moderator is choſen in the manner before mentioned, their clerk continuing by commiſſion, ſometimes during life. It is to be remembred, that before the new moderator is choſen, the rolls muſt

firſt

firſt be made up; and at the calling of each presbytery, burgh, and univerſity, their commiſſion is read. After the Aſſembly is thus conſtitute, the perſon repreſenting the Sovereign, produceth the commiſſion to him for that effect, and ordinarily a letter alſo from the Sovereign to the Aſſembly, both which are publicly read with great honour and reſpect, the members ſtanding all the time that the letter directed to them is a reading; and by their appointment, both commiſſion and letter are recorded in their books. And all the time of the commiſſioner's preſence, the members ſit uncovered. The commiſſioner ordinarily has a diſcourſe to the Aſſembly, aſſuring them of their Majeſty's protection, and continued favour; and he intreats them to unanimity and diſpatch in their affairs; to which the new moderator uſeth, in name of the Aſſembly, to make a ſhort and ſuitable return; both which are likewiſe recorded.

The order obſerved among the members, and in the Aſſembly-houſe.

§ 20. By the act of Aſſembly July 29. 1640, it is appointed, that the commiſſioners ſit together unmixed, and the places where they ſit be divided from the ſeats of others. As alſo, that four perſons of reſpect have warrant to injoin that there be no noiſe, no ſtanding, nor diſorderly behaviour; and if any ſhall diſobey them, or direct his ſpeech to any, except to the moderator, and that one at once, with leave firſt aſked and given, he is to be rebuked by the moderator: and if he deſiſt not, he is to be removed out of the Aſſembly for that ſeſſion. As alſo, that the minutes of ilk ſeſſion be read before their riſing; and if the matter concern the whole kirk, let it be read in the beginning of the next ſeſſion. This order is to be read the firſt ſeſſion of each Aſſembly, and the act is ratified July 28. 1641, and Auguſt 6. 1642.

Committees of Aſſemblies, their number and way of being choſen.

§ 21. The ordinary committees uſed in General Aſſemblies are, 1. The commitee for overtures. 2. The committee for bills, references, and appeals. 3. The committee for elections and commiſſions. 4. Committees for reviſing ſynod-books and regiſters, and of commiſſions of General Aſſemblies. 5. A committee for cenſuring of abſents, and nominating miniſters to preach before the commiſſioner, if preſent. 6. When the King or Queen honours them with a letter, there is, in the firſt place, appointed a committee for drawing an anſwer thereto. There

are

are also other committees for particular matters, named as is found needful. All committees of Assemblies are to consist of ministers and ruling elders, members of several synods; and in more numerous committees, some out of every synod: all which commitees are ordinarily named by the moderator, in presence, and approved by tacit consent, only sometimes members propose the adding of some others, whose motion useth likewise to be acquiesced in: so that there hath never yet been any election of committees, either by synods giving in separate lists, or by members giving in lists, as hath been done in our late parliaments. Only for preventing the perplexing of Assembly business, it is fit that no member be put upon more committees than one.

Committee of overtures and others their power, how restricted.

§ 22. Albeit no business ought to come in to the Assembly directly, till it be proposed to, and prepared by some committee to whom it properly belongs; yet no committee hath a negative over the Assembly: and it was never their intention to confine and restrict themselves only to consider of these matters which their commitees were pleased to allow and transmit to their consideration: for, by act of Assembly, July 29. 1640, an overture (and from a parity of reason, a petition or any other thing) may be proposed in full Assembly, with the reasons thereof, after that the committee hath refused to transmit the same.

No ecclesiastical process to be printed without allowance.

§ 23. To avoid altercations and debates in open Assembly, which might prove dangerous, and are always very indecent, after matters have been prepared by committees, they are transmitted to the Assembly. Now this design and order may be much struck at and inverted, when members or particular persons do print their petitions or overtures to the General Assembly and nation, before they be orderly brought in: Therefore by the 17th act of Assembly 1700, all persons are discharged to presume to print any petition, appeal, reasons, or answers, or any part of any process to be brought in to the General Assembly, or any other church judicatory, without leave given by them, with certification, that the same shall not be read nor considered.

A diet for prayer.

§ 24. It is the laudable custom of Assemblies, before they begin close to their work, to appoint betwixt nine and twelve

twelve in the forenoon, to be ſet apart by the members for public prayer in the Aſſembly houſe, to the Almighty God, for his countenancing and directing them in the matters that ſhall come before them: where the commiſſioner is likewiſe pleaſed to attend and join in prayer: as may be ſeen in the firſt three printed acts of Aſſembly ſince the Revolution, and among the indices of unprinted acts thereafter.

Matters treated in Aſſemblies.

§ 25. Conform to ancient cuſtom, by the 3d act of Aſſembly 1702, all ſynod books are appointed to be punctually brought in and preſented to the General Aſſembly yearly, in the beginning thereof: which books, after hearing a report concerning them, from the committee appointed to reviſe them, the Aſſembly does approve or diſallow thereof as they find ground. All references from ſynods, appeals, grievances, petitions and complaints, are here examined and anſwered: acts and conſtitutions for all the churches are agreed upon with common conſent, conform to the 9th act of Aſſembly 1697, of which hereafter about preventing of innovations. Here courſe is taken for planting of churches with well qualified miniſters: rules are ſet down, by which inferior judicatures ſhall be directed in all their proceedings. It is their buſineſs to ſee that the ſmall part of the patrimony of the church yet remaining be preſerved and rightly applied. They join or disjoin pariſhes from preſbyteries, and presbyteries from ſynods: they indict national faſts and thankſgivings: they are concerned to appoint fit perſons and methods for drawing up the hiſtory of the church: they alſo ought to take care that works of charity, for ſuſtentation of the poor, be promoted. By the wiſdom and authority of this Aſſembly, gangrenes of errors and diviſions are prevented, that they ſpread not againſt truth and unity. But they decline to meddle in theſe matters they judge civil, as being incompetent to them, as may be ſeen by the index of unprinted acts of Aſſembly 1690. Church-judicatures ought not to meddle formally with civil matters, no more than the ſtate ought to meddle formally with matters eccleſiaſtic; but the object materially conſidered may be the ſame, and fall under conſideration, both of church and ſtate, in different reſpects. By the 5th article of the 31ſt chapter of our Confeſſion, ſynods or councils are to handle or

conclude nothing but what is eccleſiaſtical, and are not to intermeddle with civil affairs which concern the commonwealth, unleſs by way of humble petition in caſes extraordinary, or by way of advice for ſatisfaction of conſcience, if they be thereunto required by the civil magiſtrate.

Commiſſions of General Aſſemblies their power.

§ 26. What matters General Aſſemblies cannot overtake themſelves, they do refer to their commiſſions; in propriety of ſpeech they do import the ſame thing with committees; yet, *de praxi*, a committee is appointed only to prepare matters, whereas a commiſſion determines in matters committed to them, and from whoſe ſentence therein there lieth no appeal to the enſuing General Aſſembly, though a complaint may be tabled before the next Aſſembly againſt the commiſſion their proceedings. The power of the General Aſſembly is never lodged in them, as to making acts in any caſe: and it is both more expedient and decent that the Aſſembly determine in caſes of appeals from ſynods, where they have been unanimous in their ſentence, than to refer the final deciſion to a commiſſion, who may be of a ſmaller number than the ſynod, and whoſe quorum is but about the eight part of ſome ſynods. Delegation, or commiſſion to determine, ſeems inconſiſtent with the principles of Presbyterial government: for if the Aſſemblies of the church can give power to delegates to determine in one point, they may in more, and conſequently in all, and thereby may introduce a Prelacy. General Aſſemblies ſhould not give any other delegations but executive, except in extraordinary caſes: for they being delegates themſelves, ought leaſt of any church-aſſembly to delegate: and if they can commit their power to twenty-one, certainly they may commit the ſame to fourteen. Commiſſions may have ſub-committees for preparing and reporting, but not to determine, or ſo as to roll the commiſſion upon them. The commiſſion and the proceedings, and regiſter of their actings are always ſubject to the cenſure of a General Aſſembly. If the Aſſembly do not appoint their moderator and clerk to attend them in thoſe ſtations, they may then nominate their own moderator and clerk. Their quorum is twenty-one, whereof fifteen to be always miniſters, and they continue till a new General Aſſembly meet, as may be ſeen in the printed commiſſions in the acts of Aſſemblies.

§ 27. The

§ 27. The General Assembly, by their 6th act 1705, does appoint that the whole presbyteries of this national church be equally represented in commissions, and that their representation be proportioned to the number of ministers that are in each presbytery; the old ministers which were ordained before the year 1662, being always supernumerary: and that two or three of the members of the General Assembly in each synod, be appointed as a committee to name the members of the commission, and that the whole representatives of presbyteries in the several synods at Assemblies, do meet by themselves, and name their respective members of the said committee. And the General Assembly by the same act, does appoint the expences of the said commissioners to be born and defrayed by the several presbyteries which they represent, according to the number of the days of their attendance; and that their presbyteries take care to supply their charges with preaching during their absence on the account foresaid. The method of chusing members of the commission, their charges to be paid, and churches supplied.

§ 28. The General Assembly, by their 6th act 1703, does require the members of the commission to give all due attendance thereon, as they will be answerable, which members are condescended upon by the 15th act of Assembly 1705, to be one at least of that number of the several presbyteries who are members of the commission, and they are to attend the meetings thereof by turns. And presbyteries are ordained to send in to the commission, the names of such as they have appointed to attend the several diets thereof. And by the forsaid act 1703, the clerks of the commission are ordained to record lists of the absents from each quarterly meeting, and from the meetings in time of parliament, or who shall go away therefrom without leave first obtained, and send an extract of their names to the respective synods, who are impartially to censure them, and make report thereof to the next General Assembly: and to this effect, the clerks of the commission are ordered to lay before that Assembly the lists of these absents. And in the instructions to the commission 1708, all presbyteries within twelve miles of Edinburgh are discharged to meet during sitting of the commission. Absents from the commission, how censured.

§ 29. Some few years ago, the presbyteries of this church, conform to what had been before practised, did

Delegates from presbyteries to attend parliaments.

delegate one of their number, being a minister, to repair to the city where the parliament did sit, and during that time attend and watch *ne quid detrimenti caperet ecclesia*. But the commission consisting of both ministers and elders,

No lawful church court without elders.

wit out which no ecclesiastical judicatory or committee thereof can be lawful, (see § 4 of this title), and also, that all the presbyteries are therein represented, and that the commission now is ordered to attend in the time of parliament, the former meeting of such delegates is now supplied more conveniently by the meeting of the commission; and I am sure, much more legally both by church and state constitutions: for neither do authorise any other ecclesiastical judicatory but Assemblies, synods presbyteries and kirk-sessions, or their committees, consisting of ministers and ruling-elders. And the act of parliament 1690, ratifing the Confession of Faith, and settling Presbyt rian church government, doth establish the exercise of that church government in the hands of ministers and ruling elders And it may be doubted if the state would correspond with such delegates, or regard addresses from them, their meetings wanting the stamp, both of civil and ecclesiastical authority.

Members of Assembly should have tickets for access.

§ 30. In the act of Assembly 29th July 1640, art. 2. concerning ordering the Assembly-house, the commissioners to General Assemblies are to receive tickets from the magistrates of the burgh where the Assembly sits, at the delivery of their commissions, whereby they may have ready access to the Assembly-house: and this act is renewed by the Assembly 1690, and is among the unprinted acts.

Absents from Assemblies how censured.

§ 31. By that same act, whatsoever presbytery, burgh, or university, shall not send commissioners, is to be summoned to the next General Assembly, to be censured by them as they find reasonable. And by the 6th act of Assembly 1694, such commissioners as do not attend duly from the beginning, and through the whole diets of the General Assembly, and the committees which they may be put upon, not having a relevant excuse, may be censured as the Assembly shall think fit

The stile of acts of Assembly, and petitions thereto. They must not run in the magistrates name.

§ 32. The stile of acts of the General Assembly runs thus: The General Assembly appoints and ordains, and sometimes recommends. Their acts should rather be like directions from the chair, than discourses from the pulpit. Though

Though the Sovereign's perſon be therein ſometimes repreſented, yet his name cannot be joined with the General Aſſembly in making of acts; becauſe the civil magiſtrate, conſidered as ſuch, is neither head nor member of the church, nor of any of her judicatures; and it is the authority of the General Aſſembly of this national church that can alone bind her members: Which authority doth not ſo properly conſiſt in making of laws, as it doth in declaring what their Lord and Maſter hath already appointed. And though eccleſiaſtical conſtitutions ſhould be enacted in the ſovereign's name and authority, yet theſe could never bind the ſubjects as ſuch, becauſe the legiſlative power is lodged in the Sovereign and eſtates of parliament, and in them only. Hence all petitions to the General Aſſembly are only addreſſed to the moderator and members thereof, and not to the Sovereign nor his commiſſioner, though preſent; for petitions can be preſented to none but to ſuch as thoſe in whoſe name and authority they are granted.

The authorities of Aſſemblies and their acts. The pain of diſobeying and declining the ſame.

§ 43. By the act of Aſſembly December 20. 1638, they ordain presbyteries, and provincial Aſſemblies, to convene before them ſuch as will not acknowledge that Aſſembly, (and from a parity of reaſon any other Aſſembly), nor acquieſce unto the acts thereof, and to cenſure them accordingly; and refractory presbyteries are to be ſummoned by the commiſſion to compear before the next General Aſſembly to abide their trial; and by a clauſe in the end of the 5th act, ſeſſion 2. King William and Queen Mary's parliament, it is provided, that whatſoever miniſter being convened before the General Aſſembly, or repreſentatives of this church, or their commiſſions, or the viſitors to be by them appointed, ſhall either prove contumacious in not appearing, or be found guilty, and therefore cenſured, whether by ſuſpenſion or depoſition, they ſhall *ipſo facto* be ſuſpended from, or deprived of their ſtipends and benefices. And by the book of canons put in form for the government of the church of Scotland, by Engliſh biſhops their counſel and influence, and approved by King Charles I. his proclamation, dated at Greenwich the 23d day of May 1635, it is appointed, that national ſynods called by his Majeſty's authority, for matters concerning the ſtate of the church in general, ſhall bind all perſons, as well abſent as preſent,

preſent, to the obedience of the decrees thereof in matters eccleſiaſtical. And if any ſhall affirm or maintain, that a national ſynod ſo aſſembled ought not to be obeyed, he ſhall be excommunicated, till he publicly repent and revoke his error.

Advocate or procurator, ſollicitor or agent for the kirk.

§ 34. Beſide the clerk of the Aſſembly, there uſeth to be an advocate or procurator for the kirk choſen by them, who was to adviſe them in matters of civil right, and to plead what concerns the right of the church before civil courts; and in his name ſummonſes are raiſed before the commiſſion of parliament for plantation of kirks, or Lords of ſeſſion. The agent or ſollicitor for the kirk is likewiſe elected by the Aſſembly, and he acts and agents their buſineſs in ſuch order as they appoint him. Their agent was priviledged to be preſent at all the meetings of that commiſſion of parliament, even when they acted with cloſe doors. In the late Prelatic times, the King's ſollicitor was, by his patent, conſtitute ſollicitor for the church too. But whether in this government her Majeſty's advocate be alſo by his patent conſtitute advocate for the church, is a thing I cannot certainly aſſert. The agent has the care put upon him of ſending diſpatches to the ſeveral presbyteries.

The adjourning and diſſolving of Aſſemblies and other church-judicatures.

§ 35. All church judicatures at every riſing appoint their next ſitting, ſo that their meetings are not precarious and uncertain, but entirely and intrinſically, as to their time and frequency, lodged in the will and diſcretion of the plurality of the members of her reſpective judicatures. The kirk-ſeſſion, being properly the only radical church judicature, not conſiſting of delegate, but of perpetual and fixed members, cannot be at any time diſſolved, but by themſelves are adjourned from time to time: Albeit they uſe to begin and conclude the number of their ſeſſions, at and after the preſbytery hath approved of their proceedings. All church-judicatures, but eſpecially this, were called Conſiſtories, where the judges did ſtand in adminiſtring juſtice (ſee Stair's Inſtit. p. 524) and even yet, their moderators, preſidents, or prolocutors do ſtand, as the mouth of their meetings. Preſbyteries are radical as to the paſtors, and delegate as to the ruling elders, (ſee tit. 12. § 1.) For the firſt preſbytery after each ordinary meeting of the ſynod, when new elections of elders are returned, that presbytery doth begin the firſt ſeſſion thereof, and ſo

other

other seſſions of the ſame continue till the next ſynod in ordinary be over. And provincial ſynods conſiſting of presbyteries, they do in part diſſolve twice a year, and ſo the ſynodical ſeſſions are counted from one ordinary ſynod to the next ordinary meeting of another ſynod. But national Aſſemblies being annual, and conſiſting all of delegates, as hath been ſaid, the ſeſſions thereof are counted from the firſt meeting until they part and diſſolve in the ſame place, at leaſt by the conſtitutions and practice of this church, until, and no longer than the ordinary time for a new annual Aſſembly: for no doubt, an Aſſembly, if the affairs of the church ſo require, may tranſlate, and alſo continue their meeting, as was done anno 1651; but it neceſſarily diſſolves before the year. At the cloſing of every ſeſſion of the Aſſembly, the moderator appoints the next diet, in preſence, and with conſent of the members; then he turns to the commiſſioner, and acquaints his Grace thereof, to which he ordinarily anſwers, Be it ſo, or, I am ſatisfied; whereupon the adjournment is intimated publicly at the door by the beddal, afterwards the moderator cloſes with prayer.

§ 36. At cloſing of the General Aſſembly, ſome few of their number are nominated to aſſiſt the moderator and clerk, in reviſing the minutes and proceedings of that Aſſembly, before the ſame be recorded in their regiſters, and to determine what of their acts are fit to be printed: but it were as proper for the Aſſembly to give orders therein, as the acts are paſſed.

Committee for reviſing the minutes and printing the acts.

§ 37. All the affairs which the Aſſembly could overtake, being brought to a cloſe, the moderator cauſeth read the minutes of the laſt ſederunt, theſe of former ſederunts being always read at the beginning of each ſeſſion; which being done, he diſcourſeth to the Aſſembly concerning the good providence of God that brought them together, and in allowing them the countenance and protection of the ſupreme magiſtrate; and exhorteth the members, to faithfulneſs, loyalty, and diligence in their ſtations. The moderator having underſtood the mind of the Aſſembly from previous communings with the members, as to the particular time and place of the next Aſſembly's meeting, which diet being concerted before, alſo with the commiſſioner, he doth in their name repreſent the ſame to the King or Queen,

The ordinary way of diſſolving Aſſemblies.

Queen, or their commiſſioner, if preſent, and upon their agreeing thereto, it is to be recorded and publicly intimate at the door of the Aſſembly-houſe by their order. The commiſſioner agrees ordinarily thereto in theſe or the like words (to many offenſive enough) I do in my Maſter's name (or her Majeſty's name) diſſolve this Aſſembly; and, in the ſame name and authority, I appoint the next General Aſſembly to meet at ſuch a time and place, which ordinarily is the ſame with that which the moderator in name of the Aſſembly did repreſent. Then the moderator cloſeth the Aſſembly with prayer, ſinging of pſalms, and pronouncing of the bleſſing.

How two Aſſemblies were diſſolved in an extraordinary manner, and their behaviour in theſe caſes.

§ 38. Indeed when it happens that a commiſſioner doth rather croſs than countenance the Aſſembly, either by an abrupt and interrupting diſſolution, or by not appointing the next annual Aſſembly according to law; in theſe caſes their behaviour is different, as may appear in the two following inſtances. The firſt was in the Aſſembly 1638. There the M. of H. his Majeſty's commiſſioner, having diſſolved them after ſome few days ſitting, both in the Aſſembly-houſe and by public proclamation; they did notwithſtanding (having proteſted againſt their diſſolution) continue their ſitting till they ended the work they met for, and appointed the time for their next General Aſſembly, for which you will find their apologetical vindication in their printed letter to the King. Another inſtance is this, the E. of Lothian, their Majeſties commiſſioner to the General Aſſembly 1692, upon Saturday the 13th of February, (the Aſſembly being met and conſtitute by prayer) did immediately thereafter deliver himſelf as follows: Moderator, what I ſaid laſt had ſo little ſucceſs, that I intend to give you no more trouble of that nature; only this, you have now ſat about a month, which was a competent time both to have done what was the principal deſign in calling this Aſſembly, (of uniting with your brethren) and to have done what elſe related unto the church; but his Majeſty perceiving no great inclination among you to comply with his demands, hath commanded me to diſſolve this preſent General Aſſembly; ſo I, in their Majeſties name and authority, do diſſolve this preſent General Aſſembly. Whereupon the moderator asked his Grace, if this Aſſembly was diſſolved, without

out naming a diet for another? To this his Grace made return in these words: His Majesty will appoint another Assembly in due time, wherewith you will be timeously advertised. Upon this, the moderator desiring of his Grace that he might be heard a few words, his Grace told him that he could not hear him as moderator, but only as a private person: the moderator answered, in whatever capacity your Grace pleaseth, I beg to be heard a few words. His Grace replied, That as a private man he might speak; whereupon the moderator delivered himself as follows: May it please your Grace, this Assembly, and all the members of this national church, are under the greatest obligations possible to his Majesty, and if his Majesty's commands to us had been in any or all our concerns in the world, we would have laid our hands on our mouths and been silent: but they being for a dissolution of this Assembly, without indicting another to a certain day; therefore, (having been moderator to this Assembly), in their name, they adhering to me, I humbly crave leave to declare, that the office-bearers in the house of God, have a spiritual intrinsic power from Jesus Christ, the only head of his church, to meet in assemblies about the affairs thereof, the necessity of the same being first represented to the magistrate. And further, I humbly crave, that the dissolution of this Assembly, without indicting a new one to a certain day, may not be to the prejudice of our yearly General Assemblies granted to us by the laws of this kingdom. Here the members rose up, and with one voice, declared their adherence to what the moderator had said; whereupon the moderator, turning himself to the Assembly, cried, Brethren, let us pray: but the members, by a general cry, pressed to name a diet for the next General Assembly. Whereupon the moderator said, If they please I, the next General Assembly might meet here at Edinburgh upon the third Wednesday of August 1693; and the members did again with one voice declare their approbation thereof. Then the moderator having ordered silence, concluded with prayer, and singing the 133d psalm, and pronouncing of the blessing.

The church's intrinsic power asserted.

§ 39 In the end of the act of Assembly 1647, approving the Confession of Faith, it is asserted, that it is always

The church's judgement about their right to meet synodically.

ways free to the magiſtrate to adviſe with ſynods of miniſters and ruling elders meeting upon delegation from their churches, either ordinarily, or being indicted by his authority occaſionally, and *pro re nata*. t being alſo free to aſſemble together ſynodically, as well *pro re nata*, as at the ordinary times upon delegations from the churches, by the intrinſic power received from Chriſt, as often as it is neceſſary for the good of the church to aſſemble, in caſe the magiſtrate, to the detriment of the church, with-hold or deny his conſent, the neceſſity of occaſional Aſſemblies being firſt remonſtrate unto him by humble ſupplication; ſee § 1. of this title.

TITLE XVI.

The Order of the Rolls of Church-Judicatures, and Ranking of Church Office-bearers. And of her Regiſters.

Rolls of kirk-ſeſſions, and ranking of elders.

§ 1. RULING elders and deacons in church-ſeſſions, ſhould be regularly inrolled, and called to take place, according to the ſeniority of their ordination: but the poverty of the church being ſuch, that there is no maintenance or benefice annexed to theſe offices, therefore they uſe to be ranked according to their ſecular ſtations and employments; only ſeniority of ordination may be a rule whereby diſputes for precedency among equals are to be decided.

How miniſters take place of one another.

§ 2. All miniſters are inrolled in preſbyteries, and have place only according to the ſeniority of their ordination; a preſbyter labouring in the word and doctrine, being the higheſt officer in the church, to be ſure no office-bearer of an inferior order will ever compete with him: and therefore a miniſter of a later ordination, albeit he have the character and ſtation of almoner or chaplain to the Royal Family, or of being hiſtoriographer, principal, or profeſſor of theology or philoſophy in any univerſity, yet he will not preſume thereupon to take place from one of a prior ordination; becauſe all theſe ſtations and characters, eccleſiaſtically conſidered, are of an inferior order to that of the paſtor, unleſs he pretend unto it by virtue of civil place

place and power, which is condemned in paſtors as incompatible with their ſpiritual function, by Aſſembly 1638, Decem. 9 but the order in which miniſters deliver the preſbyterial exerciſes, is according to the ſeniority of erection of the pariſh churches where they officiate

§ 3. It is uſual to change the order of the roll every ſynod, ſo that the preſbytery that was firſt called in the roll of the former ſynod, is now called laſt (as was ſaid above), and that which was in the ſecond place is now called firſt: and the members are called according to the roll of each preſbytery, preſented to the clerk by the moderators thereof, with the ruling elders therein inſert. And though a pariſh be vacant, or the miniſter thereof not preſent, yet the ruling elder for that church ſeſſion is to be called for and inrolled But thoſe who are againſt ruling elders their being ſupernumerary to miniſters in judicatures may diſlike this: Yet if once a judicature fix on a quorum, whereof always ſo many are to be miniſters, though double their number of elders ſhould come and be preſent, there is nothing as yet to hinder them all from voting.

Rolls of ſynods, how ordered. No act to hinder elders to vote when they may be ſupernumerary to miniſters.

§ 4. The rolls of General Aſſemblies do begin with the ſynod which in the former Aſſembly was called in the ſecond place, leaving the ſynod which was then firſt called now laſt; by which rotation the equality is better preſerved. Commiſſioners from presbyteries are placed in their commiſſions according to the ſeniority of their ordination: next to them are inrolled the commiſſioners from the univerſities within the bounds; and next to them ſuch as have commiſſions from royal burghs therein. In General Aſſemblies, ruling elders are called immediately after the miniſters their colleague-commiſſioners.

Rolls of General Aſſemblies.

§ 5. The firſt thing to be done at every diet, after calling the rolls, is the hearing the minutes of the laſt ſederunt or ſeſſion read; and till they be paſſed and allowed by the judicature, and alſo ſubſcribed by the moderator, there ought no extracts thereof to be given; nor till then, ſhould it be warrantable for the clerk to enter them into the regiſter.

Minutes reviſed and ſigned before extract, or recording.

§ 6. In any thing wherein the moderator or clerk is particularly concerned, they ought in that caſe both to ſubſcribe the minutes, as the privy ſeal uſed to be appended

Clerk and moderator a check to one another. The atteſtation and title of the regiſters.

to charters, or the like paſſing the great ſeal in favours of the keeper of the great ſeal. And at the cloſe of the regiſter of every General Aſſembly, and of each inferior church judicature, when they are given in to be approved by their next immediately ſuperior judicature, they bear, "Here ends the regiſter of the acts and proceedings "of from to conſiſting of pages." And this atteſtation is to be ſubſcribed by the moderator and clerk: and every record at the beginning is to bear its own proper title, viz. The regiſter of the acts and proceedings of ſuch a judicature, begun at the day of &c.

Form of approving church-regiſters runs in a negative ſtyle.

§ 7. By the ninth act of Aſſembly 1700, they appoint all provincial ſynods and presbyteries to be careful in reviſing the regiſters of the judicatures under their immediate inſpection, and that they appoint a competent number of the moſt fit and experienced among them for that work; and when they find nothing to challenge in any regiſter, they are to give it the atteſtation following: "The pro-"vincial ſynod of having heard the report of thoſe "appointed to reviſe the presbytery book of "and having heard their remarks thereupon, and the ſaid "presbytery's anſwer thereto; and it having been inquired "by the moderator, if any other had any complaints to "make againſt the actings of the ſaid presbytery, and no-"thing appearing cenſurable, ordered the clerk to atteſt "this in their presbytery book." And ſo for the regiſters of provincial ſynods and kirk-ſeſſions, *mutatis mutandis*; and alſo for the regiſters of the commiſſions of Aſſemblies, by the 8th act of Aſſembly 1706. But if there be any thing truely cenſurable in the ſaid books, with reſpect to diſcipline, that it be recorded as cenſured, both in the ſynod book and atteſtation.

Order in filling up blanks, deletings, interlings, and omiſſions in regiſters.

§ 8. All ſentences and acts are to be filled up in the records, as all other things ſhould be, according to the priority of their being voted or agreed unto, and that although no extract hath been, or perhaps ever may be called for. And when any thing is omitted in the body of a record, it may be written on the margin, which the moderator and clerk muſt ſubſcribe again. When any thing is delete, let it be marked delete on the margin, and ſubſcribed as the other, counting the lines or words blotted out.

But

But interlinings are moſt improper, and derogatory to that credit which a record ſhould bear. Further, when any blank is left in the record, and yet there is nothing wanting, it may be ſcored, or which is more proper, filled up with *nihil hic deeſt*; which words may be lengthened or ſhortened according to the bounds of the blank. See the 9th act of Aſſembly 1706.

§ 9. By the 11th act of Aſſembly 1703, for the better preſervation of their regiſters, they enact and appoint, that there be two authentic copies thereof, both ſubſcribed by the moderator and clerk; one copy whereof to lie in the clerk's cuſtody, and the other to be ſealed, and laid in ſome ſecure place, where the Aſſembly or Commiſſion ſhall appoint: As alſo, that a ſubſcribed extract of the proceedings of each General Aſſembly be ſent, a little after the riſing thereof, to the ſeveral ſynods within this church, to be by them recorded in a book. The regiſters how to be preſerved.

§ 10 As to the ſtyle of the Aſſembly's addreſſes and letters to their Sovereigns, or foreign churches, and as to the ſtyle of their letters to the Aſſembly, both may be ſeen in their printed regiſters; as alſo, theſe, with the records of their commiſſions, will evidence what civilities the church pays in congratulating and attending on the miniſters of ſtate, and other great men: thus they court their favour, and return them their thanks, all done for the benefit and advantage of the preſent church-eſtabliſhment. Civilities paid by the church.

TITLE XVII.

Of Viſitation of Schools and Univerſities.

§ 1. ALL ſchools and colleges were to be reformed, and none admitted to inſtruct the youth privately or publicly, but ſuch as ſhould be tried by the viſitors of the kirk, James VI. parl. 1. cap. 11. and even under the late Prelacy, none were admitted to teach in any public ſchools, without licence from the ordinary, Charles II. parl. 1. ſeſſ. 2. cap. 4. *ſub fin.*; and alſo, by the act of Aſſembly, Dec. 17. 18. 1638, art. 4. they ratify the acts of Aſſembly 1565, 1567, and 1595, whereby viſitation of colleges is to be by way of commiſſion from the General Aſſembly; and the principal regents and profeſſors within Viſitations of ſchools and colleges were appointed by authority of the Aſſembly.

in colleges, and masters and doctors of schools, are to be tried by them concerning the soundness of their judgement in matters of religion, their ability for discharge of their calling, and the honesty of their conversation. It is no wonder the church think herself much concerned, that these seminaries of learning be duly regulated, considering how much it tends to the increase of Christian knowledge and learning, and the advantage of true piety and religion. By the General Assembly 1638. they grant commissions for visitation of the colleges of Aberdeen and Glasgow; and the Assembly 1639, appoints visitations of the universities of St Andrews and Glasgow. Again, the Assembly 1640, appoints visitations of Glasgow and Aberdeen colleges, as may be seen in the index of the unprinted acts of these and subsequent Assemblies.

Power of visitation claimed by the Sovereign. Visitors power and work distinguished.

§ 2 The power of visitations of universities, colleges, and schools, is now claimed by the Sovereigns to be their undoubted right and prorogative, as is evident from the narrative of the act of parliament 1690, for the visitation of universities. The power granted to the visitors by that act, is only executive or judicative, and not legislative, which neither can nor should be; for seeing the trust wherewith the legislators themselves are cloathed is only personal, it cannot be delegated to others, unless they receive power from their constituents for that effect and purpose: But though their power could be delegated, it should not be done; for some designing and disaffected members, in such commissions, might so manage the plurality of a quorum to plant and regulate these nurseries of church and state, as might pave the way, and dispose the nation more easily for some pernicious revolution. The visitors appointed in that commission are both members of parliament and ministers. The one sort I think, is appointed to remove disloyal teachers, and to consider the foundations of these seminaries, with the rents and revenues thereof, and how the same have been managed, and to set down good rules for the management thereof. And ministers, I think, are named to take trial if the teachers be erroneous, scandalous, negligent, or insufficient, and for ordering the manner of teaching; and thereupon present their humble advice to the statesmen; for authoritatively they cannot

cannot act without delegation from the church. See the title about extraordinary synods, § 1.

§ 3. There is none will grudge the church the exercise of this power of visiting colleges, so much as these masters, who have ground to fear that their insufficiency and negligence may come to be exposed and discovered upon an exact and judicious trial. Again, there are some factious masters that desire only statesmen to be visitors, among whom they think some of their *quondum* disciples may be found, who will be influenced to favour their ambitious or revengeful designs.

Who are ordinarily the greatest enemies to the church-visitations.

§ 4. As to grammar schools the power of visiting them remains with presbyteries; for by the 42d act, parl. 1693, it is declared, that all schoolmasters, and teachers of youth in schools, are, and shall be liable to the trial, judgement, and censure of the presbyteries of the bounds for their sufficiency, qualifications, and deportment in the said office. By the act of Assembly 7th Feb. 1645, they appoint, that every grammar-school be visited twice in the year, by visitors to be appointed by presbyteries and kirk-sessions in land-ward parishes, and by the town-council in burghs, with their ministers; and where universities are, by the universities, with consent always of the patron of the schools, that both the fidelity and diligence of the masters, and proficiency of the scholars in piety and learning, may appear. Inquiry is also to be made, if masters be diverted from due attendance by any other employment. By the 13th act, Assembly 1706, somewhat of the same nature is injoined, viz. That presbyteries visit grammar schools twice a year, by some of their own number.

Presbyteries may yet visit grammar-schools twice a-year.

§ 5. By the foresaid act 1645, they appoint, that no schoolmaster be admitted to teach a grammar school in burghs, or other considerable parishes, but such as, after examination by the ministers, deputies of the town and kirk-session and parish, (which is, I think, the heritors), shall be found skillful in the Latin tongue, not only for prose, but also for verse, and shall be also approved by the presbytery therein

Who examines schoolmasters at their admission.

§ 6. By the foresaid act, they appoint, that at the time of every General Assembly, the commissioners directed thereto from universities, meet and consult together for the advancement of piety and learning, and keeping of an uniformity

Correspondings of universities.

formity in doctrine, and good order among the universities. What they do this way, is not to bind the universities, till it be presented to the General Assembly, and receive their authority, as may be gathered from the Assembly's act, 18th June 1646. This of new is enacted by the 6th act of Assembly 1707.

TITLE XVIII.

Of a General Council of Protestants.

Corresponding with foreign churches, such as Magdeburg, 1577, and Westminster, 1643, the expences and safe conduct of correspondents.

§ 1. AS provincial Assemblies may, and do correspond with other provincial Assemblies, so may General Assemblies with the Assemblies of other churches In a manuscript of the acts of Assemblies, Edinburgh October 24. 1577, you will find that Casmir having written to the Queen of England, of a council to be held at Magdeburg, for establishing the Augustine Confession, the Queen wrote thereof to the regent in Scotland, who communicated her letter to the Assembly, and desired they might send some of their number to assist thereat. Whereupon the Assembly named Mr Andrew Melvill, and some others. And some ministers and elders were sent from the Assembly to the Assembly of Divines at Westminster, in order to carry on the unity and uniformity in religion and church-government It belongs in these cases to the civil powers of these nations from which they go, to take care that their charges be honestly defrayed; and the states, in whose dominions the council is to be, use to grant a safe conduct to the foreign correspondents. See tit 15. § 9

General council, its authority.

§ 2. In the book of policy of the kirk, agreed unto *anno* 1581, they say, besides these Assemblies, there is another more general kind of Assembly, an universal Assembly of the Church of Christ in the world, which was commonly called an œcumenic council, representing the universal Church, which is the body of Christ. Their warrant to meet, and the authority of their meeting, must be as good and as great, with respect to national and general assemblies or convocations, as the authority of these are with respect to provincial assemblies or synods

§ 3. If the Protestant Princes and Commonwealths would condescend and concert, that there should be a general

neral council at such a time and place; then the national or rather provincial Assemblies, at the appointment of their respective sovereigns, might meet and delegate one pastor and elder for each province, consisting of an hundred parishes: only from each distinct sovereignty, though consisting of less than fifty parishes, there might be at least a representation of the church therein by one pastor and ruling elder. The manner of convocating and proportioning the representation.

§ 4. Most of the churches being already bound and obliged to own and maintain that Confession of Faith which they have by their canons authorised and approved: and there being an universal harmony in the doctrine contained in all the Confessions of the Reformed Churches, the work of a General Council, as to matters of faith, would, in all probability, be sweet and easy: and if, in what relateth to the worship, discipline or government of the church, there should be some misunderstandings, God should even reveal this unto them. Nevertheless, whereto we have already attained, let us walk by the same rule, let us mind the same things, Phil. iii. 15. 16. Matters of faith almost agreed to already.

§ 5. If this council were once met and constitute, and countenanced by the authority of their several sovereigns, then they might appoint the time and place of their next council, which might be every seventh year; and let one from different churches be chosen to the chair at every new council. To prepare the way for such a Catholic meeting, it were fit, in the mean time, to have a correspondence kept among all the churches See § 1. of this title. Time of meeting, and president of this council.

§ 6. In the subordination of these Assemblies, parochial, presbyterial, provincial and national, the lesser unto the greater, doth consist the external order, strength, and stedfastness of the Church of Scotland. And when it shall please the Lord to make ready and dispose the nations for a general council, then shall that beauty and strength appear more remarkably in the whole Catholic Church, which is the body of Christ. Then should the churches be established in the faith, increased in number daily; and as they went through the cities, delivering them the decrees to keep, that were ordained of the Apostles and Elders, which were at that general council, Acts xvi. 4. 5. they should give occasion to many to rejoice for the consolation. Such a time is rather to be wished than hoped for. See tit. 1. § 1. of this book. The benefit of this subordination.

BOOK II.

TITLE I.

Of Lecturing, Preaching, Catechising, Public Prayers before and after Sermon, Singing of Psalms, and Ministerial Benediction.

Nothing to be admitted in the worship of God, but what is prescribed in Scripture.

§ 1. BY the 15th act of Assembly 1707, they declare that there are some innovations set up of late by prelatists in their public Assemblies, which are dangerous to this church, and manifestly contrary to the constant practice and known principle thereof, which is, that nothing is to be admitted in the worship of God, but what is prescribed in the Holy Scriptures; therefore they discharge the practice of all such innovations in divine worship within this church; and ministers are required to inform their people of the evil thereof.

How the congregation doth assemble

§ 2. All are to enter the assembly in a grave and seemly manner, to take their seats or places without adoration, or bowing themselves towards one place or other. If any, through necessity, be hindered from being present at the beginning, they ought not, when they come into the congregation, to betake themselves to their private devotions, but reverently compose themselves to join with the Assembly in that ordinance of God, which is then in hand. Most of what is said on this title may be found in the Directory.

Their behaviour in the time of worship.

§ 3. The congregation being assembled, the minister, after solemn calling on them to the worshipping of the great name of God, is to begin with prayer. The public worship being begun, the people are wholly to attend on it; forbearing to read any thing, except what the minister is then reading or citing: Much more are they to abstain from all private whisperings, conferences, salutations, or doing reverence to any person present, or coming in; as also from all gazing, sleeping, or other indecent behaviour.

§ 4. Read-

§ 4. Reading of the Word in the congregation, being a part of the public worſhip of God, (wherein we acknowledge our dependence upon him, and ſubjection to him) and one mean ſanctified by him for the edifying of his people, is to be performed by the paſtors and teachers, and preachers licenſed by the presbytery thereunto, who ſhould (as Ezra and his companions did, Neh viii. 8) read in the book in the law of God diſtinctly, and give the ſenſe, and cauſe them to underſtand the reading. Why the Word is to be publicly read, and by whom.

§ 5. How large a portion is to be read at once is left to the wiſdom and diſcretion of the miniſter: But it is convenient that ordinarily one chapter of each Teſtament be read at every meeting, and ſometimes more, where the chapters be ſhort, or the coherence of the matter requireth it. It is alſo requiſite that all the canonical books be read over in order, that the people may be the better acquainted with the whole body of the ſcriptures, and where the reading in either Teſtament endeth on one Lord's day, it is to begin the next. The more frequent reading of ſuch ſcriptures is alſo commended, as he that readeth ſhall think beſt for edification of his hearers, as the book of Pſalms, and ſuch like; and when he ſhall judge it neceſſary to expound any part of what is read, that work is not to begin until the reading of the whole chapter or pſalm be ended. How much is to be read at a time, and the order of reading and expounding.

§ 6. Regard is always to be had to the time, that neither preaching nor other ordinance be ſtraitened or rendered tedious: Which rule is to be obſerved in all other public performances; and therefore, by the act of Aſſembly, Feb. 7. 1645, for regulating of that exerciſe of reading and expounding the ſcriptures upon the Lord's day, mentioned in the Directory, they ordain the miniſter and people to repair to the church half an hour before that time, at which ordinarily the miniſter now entereth to the public worſhip; and that that exerciſe of reading and expounding, together with the ordinary exerciſe of preaching, be perfected and ended at the time, which formerly cloſed the exerciſe of public worſhip. And for recovering the old cuſtom eſtabliſhed by the Directory, the General Aſſembly 1694, ſeſſ. 9. appoints miniſters to read and open to the people ſome large and conſiderable portion of God's word. And the diligence of miniſters in this is to be inquired into by preſ- When lecturing begins, and how long to continue, according to the old and later acts.

byteries, at their privy cenſures, Aſſembly 1704, ſeſſ. 8. and alſo at parochial viſitations, Aſſembly 1706, act 10.

Preaching, its excellency and ſubject-matter.

§ 7 Preaching of the Word, being the power of God unto ſalvation, and one of the greateſt and moſt excellent works belonging to the miniſtry of the goſpel, ſhould be ſo performed, that the workmen need not be aſhamed, but may ſave himſelf and thoſe that hear him. Ordinarily the ſubject of his ſermon is to be ſome text of the ſcripture, holding forth ſome principle or head of religion, or ſuitable to the ſpecial occaſion emergent: Or he may go on in ſome chapter, pſalm, or book of the ſcripture, as he ſhall ſee fit. By the 8th art. cap. 3 of our Confeſſion of Faith, the doctrine of the high myſtery of predeſtination is to be handled with ſpecial prudence and care; and albeit Mr Turrentine in his Inſtit. Theol. loc. queſt. 6. maintains, very warrantably, that it ſhould be publicly taught, yet he thinks it a ſubject more proper for the ſchools than the pulpits.

Introduction, ſum, and diviſion of the text,

§ 8. The introduction to the text is to be brief and perſpicuous, drawn from the text itſelf or con text, or ſome parallel place of ſcripture. If the text be long, (as in hiſtories and parables ſometimes it muſt be), he is to give a brief ſum of it; if ſhort, a paraphraſe thereof, if need be. In both, looking diligently to the ſcope of the text, and pointing at the chief heads and grounds of doctrines which he is to raiſe from it. In analyſing and dividing his text, he is to regard more the order of matter than of words, and neither to burden the memory of the hearers in the beginning with too many members of diviſion, nor to trouble their minds with obſcure terms of art.

How doctrines are to be raiſed, explained, illuſtrated, and confirmed.

§ 9. In raiſing doctrines from the text, his care ought to be, 1ſt, That the matter be the truth of God. 2dly, That it be a truth grounded on, or contained in that text, that the hearers may diſcern how God teacheth it from thence. 3dly. That he chiefly inſiſt upon theſe doctrines which are principally intended, and make moſt for the edification of the hearers. The doctrine is to be expreſſed in plain terms: or if any thing in it need explication, it is to be opened, and the conſequence alſo from the text cleared. The parallel places of ſcripture confirming the doctrine are rather to be plain and pertinent than many; and, if need be, ſomewhat inſiſted upon, and applied to the purpoſe in hand.

hand. The reasons or arguments are to be solid, and, as much as may be, convincing. The illustrations, of what kind soever, ought to be full of light, and such as may convey the truth into the hearers hearts with spiritual delight.

What kind of doubts and controversies are to be raised and solved

§ 10. If any doubt, obvious from scripture or reason, or prejudice of the hearers, seem to arise, it is very requisite to remove it, by reconciling the seeming differences, answering the reasons, and discovering and taking away the causes of prejudice and mistakes: otherwise it is not fit to detain the hearers with propounding or answering vain or wicked cavils, which, as they are endless, so the propounding and answering of them, doth more hinder than promote edification.

Doctrines are to be applied in uses of instruction, confutation, exhortation, reproof, consolation, and trial; and how.

§ 11 The doctrine is to be brought home to special use by application to the hearers, that they may feel the word of God to be quick and powerful, and a discerner of the thoughts and intents of the heart. In the use of instruction or information in the knowledge of some truth, which is a consequence from his doctrine, he may, when convenient, confirm it by a few firm arguments, from the text in hand, and other places of scripture, or from the nature of that common place of divinity, whereof that truth is a branch. In confutation of false doctrines, he is neither to raise an old heresy from the grave nor to mention a blasphemous opinion unnecessarily; but if the people be in danger of an error, he is to confute it soundly, and endeavour to satisfy their judgements and consciences against all objection. In exhortation to duties, he is, as he seeth cause, to teach also the means that help to the performance of them. In dehortation, reprehension, and admonition, which requireth special wisdom, he is, as need requires, not only to discover the nature and greatness of the sin, with the misery attending it, but also to shew the danger the hearers are in to be overtaken and surprised by it, together with the remedies and best way to avoid it. In applying comfort, whether general against all temptations, or particular against some special troubles and terrors, he is carefully to answer such objections as a troubled heart and afflicted spirit may suggest to the contrary. It is also sometimes requisite to give some notes of trial, which is very profitable, especially when performed by able and experienced ministers, with circumspection and

and prudence, and the ſigns clearly grounded on the holy ſcripture, whereby the hearers may be able to examine themſelves whether they have attained thoſe graces, and performed thoſe duties to which he exhorteth, or be guilty of the ſin reprehended, and in danger of the judgement threatened, or are ſuch to whom the conſolations propounded do belong.

The deſign of this method.

§ 2 This method is not preſcribed in the Directory as neceſſary for every man, or upon every text: nor is it neceſſary to proſecute every doctrine which lies in the text, and ſuch uſes as are wiſely to be made choice of, as by the miniſter's reſidence and converſing with his flock he findeth moſt needful and ſeaſonable for them: but only it is recommended as a method which hath in experience been found much bleſſed of God, and very helpful for the peoples underſtandings and memories.

Catechetical doctrine to be preached, and the nature of catechiſing.

§ 3. Miniſters are to preach catechetical doctrine, beſides their ordinary work of catechiſing, in ſuch manner as they find moſt conducive to the edification of their flocks, by act of Aſſembly 1694, ſeſſ. 12. This work of catechiſing, is a familiar way of inſtruction or teaching, when the ſcholar anſwers the queſtion aſked. It is in a plain way to inſtruct thoſe of their charge in the firſt principles of the Chriſtian religion. This was the apoſtolical way of teaching the churches at their firſt plantation, Heb. v. 12. and vi. 1. 2. 1 Cor. iii. 1. 2. This is the periphraſis of paſtor and people, which the Holy Ghoſt uſeth, ſetting forth the reciprocal relation and office betwixt them, Gal. vi 6. "Let him that is taught," or catechiſed, "in the word, communicate unto him that teacheth," or catechiſeth "in all good things." CATECHUMENI, was a word uſed by the primitive church, to ſignify ſuch as learned the principles of religion, and were not yet baptiſed, and ſince, ſuch as are catechiſed but who have not received the Lord's Supper. Theſe Catechumeni, were of two ſorts: one ſort was, of thoſe who had not acceſs to baptiſm till they made public profeſſion of their faith in Jeſus Chriſt, becauſe their parents were Heathens, and themſelves ſtrangers to the Chriſtian doctrine; ſuch were catechiſed before baptiſm. The other ſort of Catechumeni was, the children of profeſſed believers, who were baptiſed when infants, having a right to

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that seal by virtue of that promise made to believers and to their children; these, after their infancy was over, and they had been privately instructed in the principles of the Christian religion, offered themselves to public catechising. Both these sorts, after they had made such proficiency in the knowledge of religion, as thereupon they were admitted to the Lord's Table, they got the name of PERFECTI.

§ 14. By the 25th article cap. 1. French church discipline, the minister of one parish cannot preach in another, without first obtaining leave of the minister of that, unless in case of his absence. In which case it must be the consistory that invites him: and if the flock be dispersed by reason of persecution or other trouble, the stranger shall endeavour to assemble the deacons and elders, which if he cannot do, he shall nevertheless be permitted to preach to re-unite the flock. And by the 20th canon *Conf. fex i, in Tullo:* "Ne liceat episcopo in alia, quæ ad se non "pertinet, civitate publice docere; si quis autem hoc fa- "cere deprehensus fuerit, ab episcopatu desistat, presby- "teri autem munere fungatur."

None to teach publicly out of their own bounds without leave.

§ 15. Every minister is ordained to have weekly catechising of some part of the parish, and masters of families are to catechise their children and servants at home, whereof account shall be taken by the minister and elders assisting him in the visitation of every family; see act of Assembly, August 30. 1639. And by the act of Assembly, July 30. 1649, the foresaid act is renewed. I know no act for weekly sermons, yet weekly preaching there is; ministers it is true are appointed to preach every Lord's day, both before and after noon, Assem. 1648, sess. 38. But there is none for week-days sermons; yet the one is observed, and the other too much in desuetude. By that act 1649, ministers are so to order their catechetic questions, as thereby the people present may at every diet have the chief heads of saving knowledge presented unto them. And by the same act, every presbytery is ordained to take trial twice in the year, whether all the ministers be careful to keep weekly diets for catechising: and if any be found negligent therein, they shall be admonished for the first fault; and if after such admonition, they shall not amend, the presbytery then shall rebuke them sharply; and if after such rebuke, they shall not yet amend, they shall

Parochial catechising is appointed to be weekly, not so week-days sermons.

ſhall be ſuſpended. Miniſters of landward congregations are certainly to be exempted from this in ſeedtime and harveſt; and the act is to be ſo underſtood.

Who are to be examined; how often, and from what age; with the uſe of examination-rolls.

§ 16. All of every quality are to be examined of whoſe knowledge miniſters are not certain, (which clearly ſuppoſeth that a miniſter being once ſatisfied with a perſon's knowledge, is not obliged again to examine him), and young perſons from the time they are capable of inſtruction, which it ſeems hath been thought to be about nine years of age, by the M. S. acts of Aſſembly at Edinburgh 1570. But ſee Aſſembly 1648. ſeſſ. 38. among remedies eccleſiaſtical, in particular againſt ignorance. And Aſſem. 1646, ſeſſ. 10. remed 9. miniſters are to have rolls of their pariſh, not only for examination, but for conſidering the ſeveral diſpoſitions of the people, that accordingly they may be admoniſhed and prayed for by them in ſecret.

Catechiſms, larger and ſhorter, their uſe in catechiſing.

§ 17. The larger and ſhorter Catechiſms agreed upon by the Aſſembly of divines at Weſtminſter, with aſſiſtance of commiſſioners from this church, are by the Aſſembly 1648, July 28. and Auguſt 0. approved and appointed directories, the larger for catechiſing proficients in religion, and the ſhorter for catechiſing ſuch as are of weaker capacity. By the act of Aſſembly 1649, ſeſſ. 30. ſeſſions are to take care that in every family, there be at leaſt one copy of theſe Catechiſms, Confeſſion of Faith, and Directory for worſhip.

A, B, C, Catechiſm condemned.

§ 18. By the act of Aſſembly July 28. 1648, they having found in a little catechiſm printed at Edinburgh 1647, intitled, "The A, B, C, with the Catechiſm," that is to ſay, "An inſtruction to be taught and learned of young "children," very groſs errors in the point of univerſal redemption, and in the number of the ſacraments, they do diſcharge the ſelling, uſing, and reprinting thereof.

When a rebuke is to be given at catechiſing.

§ 19 Some perſons may be rebuked at the time of catechiſing, who deſerve more than a private rebuke, and yet need not be brought to public repentence, Aſſem. 1648, ſeſſ 38.

Of public prayers, and the mind of the directory about them.

§ 20. The intention of the compoſers of our Directory for public prayer is expreſſed towards the end of their preface. Their own words are, "our meaning therein be- "ing only that the general heads, the ſenſe and ſcope of "the prayers and other parts of public worſhip being "known

" known to all, there may be a conſent of all the church-
" es in theſe things that contain the ſubſtance of the ſer-
" vice and worſhip of God, and the miniſters may be
" hereby directed in their adminiſtrations, to keep like
" ſoundneſs of doctrine and prayer, and may, if need be,
" have ſome help and furniture: yet ſo as they become
" not hereby ſlothful and negligent in ſtirring up the
" gifts of Chriſt in them; but that each one by medita-
" tion, by taking heed to himſelf, and the flock of God
" committed to him, and by wiſe obſerving the ways of
" divine Providence, may be careful to furniſh his heart
" and tongue, with further or other materials for prayer,
" as ſhall be needful on all occaſions."

The preſent cuſtom of uſing the Lord's prayer

§ 21. The Directory for public prayer doth recommend that prayer which Chriſt taught his diſciples, to be alſo uſed in the prayers of the church: becauſe it is not only a pattern of prayer, but is itſelf a moſt comprehenſive prayer. I do think there are no public prayers uſed in our church, wherein the petitions in the Lord's prayer, are not expreſſed throughout their prayers; though perhaps neither at the beginning, or concluſion, or all at once, by way of form. But if any, notwithſtanding, think fit to ſay it likewiſe all at once, the moſt proper time for that, ſome think, would be immediately before the other form uſed for the miniſterial benediction. See. § 29 of this title.

Of public prayers before ſermon, taken out of the Directory for public worſhip, agreed unto by the Aſſembly 1645.

§ 22. After reading of the word, and ſinging of the pſalm, the Lord is to be called upon to this effect, viz To acknowledge our great ſinfulneſs, firſt, by reaſon of original ſin, which, beſides the guilt that makes us liable to everlaſting damnation, is the ſeed of all other ſins that hath depraved and poiſoned all the faculties and powers of ſoul and body, doth defile our beſt actions; and were it not reſtrained, or our hearts renewed by grace, would break forth into innumerable tranſgreſſions, and greateſt rebellions againſt the Lord, that ever were committed by the vileſt of the ſons of men. And next, by reaſon of actual ſins, our own ſins, the ſins of magiſtrates, of miniſters, and of the whole nation, unto which we are many ways acceſſory: which ſins of ours, receive many fearful aggravations, we having broken all the commandments of the holy, juſt, and good law of God, doing that which

is forbidden, and leaving undone that which is injoined, and that not only out of ignorance and infirmity, but alſo more preſumptuouſly againſt the light of our minds, checks of our conſciences, and motions of his own Holy Spirit to the contrary. So that we have no cloak for our ſin, yea, not only deſpiſing the riches of God's goodneſs, forbearance, and long-ſuffering, but ſtanding out againſt many invitations and offers of grace in the goſpel. To bewail our blindneſs of mind, hardneſs of heart, unbelief, impenitency, ſecurity, backwardneſs, barrenneſs, our not endeavouring after mortification, and newneſs of life, nor after the exerciſe of godlineſs in the power thereof, and that the beſt of us have not walked ſo ſtedfaſtly with God, kept our garments ſo unſpotted, nor been ſo zealous of his glory, and the good of others as we ought, and to mourn over ſuch other ſins as the congregation is particularly guilty of, notwithſtanding the manifold and great mercies of our God, the love of Chriſt, the light of the goſpel, and reformation of religion, our own purpoſes, promiſes, vows, ſolemn covenants and other obligations to the contrary. To acknowledge and confeſs, that as we are convinced of our guilt, ſo, out of a deep ſenſe thereof, we judge ourſelves unworthy of the ſmalleſt benefits, moſt worthy of God's fierceſt wrath inflicted upon the moſt rebellious ſinners, and that he might juſtly take his kingdom and goſpel from us, plague us with all ſorts of ſpiritual and temporal judgements in this life: and after caſt us into utter darkneſs. Notwithſtanding all which, to draw near to the throne of grace, encouraging ourſelves with hopes of a gracious anſwer of our prayers in the riches and allſufficiency of that only one oblation, the ſatisfaction and interceſſion of the Lord Jeſus Chriſt, at the right hand of his Father and our Father, and in confidence of the exceeding great and precious promiſes of mercy and grace in the New Covenant, through the ſame Mediator thereof, to deprecate the heavy wrath and curſe of God, which we are not able to avoid or bear, and humbly and earneſtly to ſupplicate for mercy in the free and full remiſſion of our ſins, and that only for the bitter ſufferings and precious merits of that of our only Saviour Jeſus Chriſt. That the Lord would vouchſafe to ſhed abroad his love in our hears by the Holy Ghoſt; ſeal unto us by

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the ſame ſpirit of adoption, the full aſſurance of our pardon and reconciliation; comfort all that mourn in Zion, ſpeak peace to the wounded and troubled in ſpirit, and bind up the broken hearted: and as for ſecure and preſumptuous ſinners, that he would open their eyes, convince their conſciences, and turn them from darkneſs unto light. To pray for ſanctification by his ſpirit, the mortification of ſin dwelling in, and many times tyranniſing over us, the quickning of our dead ſpirits, with the life of God in Chriſt, grace to enable us for all duties of our converſation and callings towards God and men, ſtrength againſt temptations, the ſanctified uſe of bleſſings and croſſes, and perſeverance in faith and obedience unto the end. To pray for the propagation of the goſpel and kingdom of Chriſt to all nations, for the converſion of the Jews, and the fullneſs of the Gentiles, the fall of Antichriſt, and the haſtening of the ſecond coming of our Lord: for the deliverance of the diſtreſſed churches abroad, from the tyranny of the Antichriſtian faction, and from the cruel oppreſſions and blaſphemies of the Turk; for the bleſſing of God upon all reformed churches, eſpecially upon the churches and kingdoms of Scotland, England and Ireland, more particularly for that church and kingdom whereof we are members, that therein God would eſtabliſh peace and truth, the purity of all his ordinances, and the power of godlineſs, prevent and remove hereſy, ſchiſm, profaneneſs, ſuperſtition, ſecurity, and unfruitfulneſs under the means of grace, heal all our rents and diviſions, preſerve us from breach of our ſolemn covenant. Prayers are to be put up for all in ſupreme authority, and thoſe in ſubordinate authority to them, 1 Tim. ii. 1. 2. 4. which prayers are to be directed by their circumſtances. We are to pray for all paſtors and teachers, that God would fill them with his Spirit, and make them powerful in their miniſtry, and give unto all his people paſtors according to his own heart; for the univerſities and ſchools, and religious ſeminaries for church and common-wealth, that they may flouriſh more in learning and piety; for the particular city or congregation, that God would pour out a bleſſing upon the miniſtry of the word, ſacraments, and diſcipline, upon the civil government, and all the families and perſons therein; for mercy to the afflicted in any inward or outward diſtreſs; for ſea-

ſonable weather, and fruitful ſeaſons, as time may require: for averting judgements that we either feel or fear, or are liable unto, as famine, ſword, peſtilence, and ſuch like. To pray earneſtly for his grace and effectual aſſiſtance to the ſanctification of his holy Sabbath, the Lord's day, in all the duties thereof. that the Lord, who teacheth to profit, would graciouſly pleaſe to pour out the ſpirit of grace, together with the outward means thereof, cauſing us to attain ſuch a meaſure of the excellency of the knowledge of Chriſt Jeſus our Lord, that we may account all things but as droſs, in compariſon of him; and that we, taſting the firſt fruits of the glory to come, may long for a more full and perfect communion with him. That God would in a ſpecial manner furniſh his ſervant now called to diſpenſe the bread of life unto his houſehold, with wiſdom, fidelity, zeal, and utterance, that he may divide the word of God aright. to every one his portion, in evidence and demonſtration of the Spirit and Power, and that the Lord would circumciſe the ears and hearts of the hearers to hear in love, and receive with meekneſs the ingrafted word, ſtrengthen them againſt the temptations of Satan, the cares of the world, the hardneſs of their own hearts, and whatſoever elſe may hinder their profitable and ſaving hearing

Public prayer after ſermon.

§ 23 The ſermon being ended, the miniſter is to give thanks for the great love of God, in ſending of his Son Jeſus Chriſt unto us, for the communication of his Holy Spirit, for the light and liberty of the glorious goſpel, for the admirable goodneſs of God, in freeing the land from Antichriſtian darkneſs and tyranny, for the reformation of religion, and many temporal bleſſings: and to pray for the continuance of the goſpel, and all ordinances thereof in their purity, power, and liberty: and to turn ſome of the moſt uſeful heads of the ſermon into ſome few petitions, and to pray that it may abide in the heart, and bring forth fruit in the life and converſation. To pray for preparation for death and judgement, and a watching for the coming of our Lord Jeſus Chriſt; to intreat of God the forgiveneſs of the iniquity of our holy things, and the acceptation of our ſpiritual ſacrifice, through the merit and mediation of our great High Prieſt and Saviour, the Lord Jeſus Chriſt.

§ 24.

§ 24. Notwithstanding of the above Directory for public prayers, the minister may (as in prudence he shall see meet) make use of some part of these petitions after the sermon, or he may offer up to God some of the thanksgivings in his prayer before sermon. The meaning of the Directory.

§ 25 By the act of Assembly, August 6. 1649, their commission being empowered to emit the paraphrase of the psalms, and establish the same for public use, they did accordingly conclude and establish the paraphrase of the psalms in metre, now used in this church, after the presbyteries had sent their animadversions thereupon. Of singing of psalms, and the authority of the present paraphrase.

§ 26 It was the ancient practice of the church, as it is yet of some reformed churches abroad, for the minister or precentor to read over as much of the psalm in metre together, as was intended to be sung at once, and then the harmony and melody followed without interruption, and people did either learn to read, or get most of the psalms by heart; but afterwards, it being found, that when a new paraphrase of the psalms was appointed, it could not at first be so easy for the people to follow, then it became customary that each line was read by itself, and then sung: But now, having for so long time made use of this paraphrase, and the number of those who can read being increased, it is but reasonable that the ancient custom should be revived, according to what is insinuated by the Directory on this subject And that such who cannot read may know what psalms to get by heart, let such be affixed on some conspicuous part of the pulpit as are to be sung in public at next meeting of the congregation. It were to be wished that masters of families would path the way for the more easy introducing of our former practice, by reviving and observing the same in their family-worship. Singing is not to be interrupted by reading of the line.

§ 27. In the 38th sess. of Assembly 1648, there is an act for examining the labours of Mr Zachary Boyd, upon the other scripture-songs; and by Assembly 1706, sess. 4. the scripture-songs by Mr Patrick Sympson, minister at Renfrew, are recommended to be used in private families; and in order to prepare them for the public use of the church, this was renewed in Assembly 1707; and by the 15th act of Assembly 1708, their commission is instructed and appointed to consider the printed version of the scripture-songs, with the remarks of presbyteries thereupon; and after Scripture-songs to be used in families, and prepared for public use.

after examination thereof, they are authoriſed and impowered to conclude and emit the ſame, for the public uſe of the church. The preſent verſion of the pſalms having been ordered in the ſame manner in the year 1649.

The deſign and intention of the ſoul in ſinging.

§ 28. Though a believer be afflicted, yet he is to ſing, ſince it is ſuch a duty as prayer is, as it tendeth to cheer the ſoul's diſpoſition, and to ſweeten and mitigate the croſs under it. Complaints of our ſin and failings may be mournful ſongs; and becauſe God hath redeemed, pardoned, and comforted others, therefore we are to rejoice in the hope and deſires of the ſame to ourſelves. Though the ſubject of a ſong doth not always quadrate with our caſe, yet, unto a judicious attentive perſon, there is always ſome attribute of God, ſome providence, or word of his, in that very ſubject to be praiſed. In the imprecatory pſalms, we ſing to the praiſe of divine juſtice, againſt the malicious enemies of his church, like unto theſe that the Pſalmiſt did aim againſt.

Miniſterial benediction.

§ 29. The miniſter uſeth to diſmiſs the congregation with a ſolemn bleſſing, or prayer to God for them, which ordinarily is in theſe or the like words: "2 Cor. xiii 14. "The grace of the Lord Jeſus Chriſt, the love of God the "Father, and the communion of the Holy Ghoſt, be with "you all, *Amen*:" But when probationers for the miniſtry are preaching, they uſe to pronounce the bleſſing with this variation: Inſtead of "be with you," they ſay, "be "with us." And the moderators of General Aſſemblies obſerve the ſame ſtile in pronouncing of the bleſſing at their diſſolution: Yet, ſeeing no miniſter of a congregation doth put up that public prayer alone, it would therefore ſeem, it ſhould always run in the ordinary ſtile of other congregational petitions. viz. "be with us."

Bowing in the pulpit to be laid aſide.

§ 30. Miniſters their bowing in the pulpit, though a lawful cuſtom, is hereafter to be laid aſide, for ſatisfaction of the deſires of the ſynod of England, February 7. 1645.

TITLE

TITLE II.

Of Family Worſhip.

§ 1. BY act of Aſſembly Auguſt 24. 1647, revived Aſſembly 1694, they approve of the following rules and directions for private and ſecret worſhip, and mutual edification, for cheriſhing piety, maintaining unity, and avoiding ſchiſm and diviſion; and miniſters and ruling elders are required to make diligent ſeach in the congregation, whether there be among them any family which neglects to perform family worſhip; and if any ſuch be found, the head of the family is firſt to be admoniſhed privately to amend his fault; and in caſe of his continuance therein, he is to be gravely reproved by the ſeſſion; after which reproof, if he be found ſtill to neglect family-worſhip, let him be ſuſpended from the Lord's Supper. Habitual neglectors of family-worſhip cenſurable by ſuſpenſion from the Lord's table.

§ 2 The head of every family is to have a care, that both themſelves, and all within their charge, be daily diligent in performing of ſecret worſhip, and be given to prayer and meditation. Secret worſhip to be performed.

§ 3 The ordinary duties of families convened for the exerciſe of piety are theſe, 1ſt, Prayer and praiſes; next, reading of the ſcriptures, with catechiſing in a plain way together, with godly conferences; as alſo admonitions and rebukes upon juſt reaſons. What family worſhip is.

§ 4. The maſter of a family, though of the beſt qualifications, is not to take on him to interpret the ſcriptures; yet it is commendible, that, by way of conference, they make ſome good uſe of what hath been read and heard. As for example, if any ſin be reproved in the word read, uſe may be made thereof, to make all the family circumſpect and watchful againſt the ſame; or, if any judgement be threatened, or mentioned to have been inflicted in that portion of ſcripture which is read, uſe may be made, to make all the family fear, leaſt the ſame or a worſe judgement befal them, unleſs they beware of the ſins that procured it. And finally, if any duty be required, or comfort held forth in a promiſe, uſe may be made to ſtir up themſelves to implore Chriſt for ſtrength to enable them for doing commanded duty, and to apply the offered comfort. Reading of the ſcriptures to be improved in family conference.

fort. In all which the maſter of the family is to have the chief hand, and any member of the family may propound a queſtion or doubt for reſolution.

Chaplains, their uſe and abuſe.

§ 5. Perſons of quality are allowed to entertain one approved by the presbytery, for performing the worſhip of God in their families. And in other families where the head is unfit, one conſtantly reſiding in the family, and approved by the miniſter and ſeſſion may be employed in that ſervice: yet it was never the mind of the church, that perſons of quality ſhould lay their family-worſhip entirely upon their chaplains, and never perform it in their own perſons, as appears from the ſolemn acknowledgement of ſins, where they confeſs, the ignorance of God and of his Son prevails exceedingly in the land; the greateſt part of matters of families amongſt noblemen, barons, gentlemen, burgeſſes, and commons, neglect to ſeek God in their families, and to endeavour the reformation thereof; and albeit it hath been much preſſed, yet few of our nobles and great ones ever to this day could be perſuaded to perform family duties themſelves, and in their own perſons, which makes ſo neceſſary and uſeful a duty to be miſregarded by others of inferior rank; nay, many of the nobility, gentry, and barons, who ſhould have been examples of godlineſs and ſober walking unto others, have been ring-leaders of exceſs and rioting.

No mere ſtranger to perform family worſhip.

§ 6. Conſidering that perſons aiming at diviſion may be ready to creep into houſes, and lead captive ſilly and unſtable ſouls; for preventing whereof, no idler who hath no particular calling, or vagrant perſon, under pretence of a calling, is to be ſuffered to perform worſhip in families. The not obſerving of this direction hath been of ſad conſequence to ſome families in this land in late times. Neither are perſons from divers families to be invited or admitted into family-worſhip, unleſs it be theſe who are lodged with them or at meat, or otherways with them upon ſome lawful occaſion.

Set forms for prayer, in caſes of neceſſity, allowed.

§ 7. So many as can conceive prayer ought to make uſe of that gift of God, albeit thoſe who are rude and weaker may begin with a ſet form of prayer, but ſo as they be not ſluggiſh in ſtirring up in themſelves the ſpirit of prayer, which is given to all the children of God in ſome meaſure.

§ 8. Let

§ 8. Let them confeſs to God how unworthy they are to come in his preſence, and how unfit to worſhip his Majeſty, and therefore earneſtly aſk of God the ſpirit of prayer. They are to confeſs their ſins, and the ſins of the family, accuſing, judging, and condemning themſelves for them, till they bring their ſouls to ſome meaſure of true humiliation; they are to pour out their ſouls to God, in the name of Chriſt, by the Spirit, for forgiveneſs of ſins, for grace to repent, to believe, and to live ſoberly, righteouſly, and godly, and that they may ſerve God with joy and delight, walking before him; they are to give thanks to God for his many mercies to his people and to themſelves, and eſpecially for his love in Chriſt, and for the light of the goſpel; they are to pray for ſuch particular benefits, ſpiritual and temporal, as they ſtand in need of for the time; they ought to pray for the church of Chriſt in general, for all the reformed churches, and for this church in particular, and for all that ſuffer for the name of Chriſt, for all ſuperiors, for the Queen's majeſty, and inferior magiſtrates; for the magiſtrates, miniſters, and whole body of the congregation; and for their neighbours abſent about their lawful affairs, and for theſe that are at home. The prayer may be cloſed with an earneſt deſire that God may be glorified in the coming of the kingdom of his Son, and that what they have aſked according to his will may be done. Materials for family prayer

§ 9. Extraordinary duties both of humiliation and thankſgiving are to be carefully performed in families, when the Lord, by extraordinary occaſions, private or public, calleth for them. Faſts and thankſgiving days in families.

§ 10. Perſons of divers families being abroad upon their particular vocations, or any neceſſary occaſions, are to take care that the duties of prayer and thankſgiving be performed by ſuch as the company ſhall judge fitteſt. Travellers are to worſhip together

§ 11. By an act of Aſſembly 1697, ſeſſ. 5. ſuch elders and deacons as obſtinately refuſe or neglect family-worſhip by themſelves, or others appointed for that end, are to be removed from their office. Church office bearers to be depoſed who neglect family-worſhip.

TITLE III.

Of Baptism.

What baptism is.

§ 1. BAPTISM is a sacrament of the New Testament, wherein Christ hath ordained the washing with water in the name of the Father, Son, and Holy Ghost, to be a sign and seal of ingrafting into himself, and of partaking of the benefits of the covenant of grace, and whereby the parties baptised are solemnly admitted into the visible church, and enter into an open and professed engagement to be only and wholly the Lord's.

And to whom to be administered.

§ 2. The visible church, which is catholic or universal under the gospel, consists of all these throughout the world that profess the true religion, together with their children: and baptism is not to be administered to any that are out of the same, they being strangers to the covenant of promise, till they profess their faith in Christ, and obedience to him: But infants descending from parents, either both, or but one of them, professing faith in Christ, and obedience to him, are in that respect within the covenant, and to be baptised. The Directory for worship says, that children of professing parents are Christians, and federally holy before baptism, and therefore are they baptised; for their baptism supposeth them to be church-members, and doth not make or constitute them such: And therefore the practice of denying burial among Christians unto children unbaptised is unagreeable to this doctrine, and is most unwarrantable: If we consider, that the sacraments are ordinances to be administered in the church, and to the church, they necessarily suppose the pre existence of a church, and the child's previous right ot that seal.

The engagement of parents in baptism binds their children

§ 3. By that covenant, whereof baptism is a seal, the Lord promiseth to be our God, and we are in his promised strength to engage to be his people; which engagement, though Christian infants be not capable to come under of themselves formally; yet, by their parents vowing in their name and stead, they do thereby become absolutely bound to the performance thereof, because their obligation and duty to be the Lord's were supposed, and previous unto their being baptised.

§ 4. When

§ 4. When both parents are dead, or neceſſarily abſent, another ſponſor is to be taken; or, when they are ſcandalous and erroneous, and thereby give ground to think they are none of Chriſt's, and for which they may merit the higheſt cenſures of the church, if not prevented by evidences of their ſincere repentance: In that caſe, to teſtify that it doth not appear that the children have any right unto the privilege of that ſealing ordinance through their immediate parents; and that they may, notwithſtanding, have a right thereto by their more remote parents, it is neceſſary that a ſponſor preſent the children, and engage for them. The parent is to be required to provide ſome fit perſon, and, if it can be, one related as a parent to the child ſhould be ſponſor. Yet it ſeems ignorant parents are to be admitted to preſent their children; for, by act of Aſſembly 1648, ſeſſ. 38. art. 3. of domeſtic remedies of the ſins of the land, this is one, that perſons to be married, and who have children to be baptiſed, who are very rude and ignorant, be ſtirred up and exhorted, as at all times, ſo eſpecially at that time, to attain ſome meaſure of Chriſtian knowledge in the grounds of religion, that they may give to the miniſter, before the elder of the bounds where they live, ſome account of their knowledge, that ſo they may the better teach their family, and train up their children. When another ſponſor than the parent is neceſſary.

§ 5. In caſe of children expoſed, whoſe baptiſm, after inquiry, cannot be known, the ſeſſion is to order the preſenting of the child to baptiſm, and the ſeſſion itſelf is to ſee to the Chriſtian education of the child: As alſo, when ſcandalous parents cannot prevail with any fit perſon, or rather relation, to preſent the child in their name, or when the relations of deceaſed parents refuſe to become their ſponſors, the ſeſſion then is to order as is ſaid. The magiſtrate is to take care that expoſed infants be maintained, by laying the expences thereof upon the pariſh proportionally. By the 84th canon. con. 6. In Trullo, "Canonicas "patrum leges ſequentes, de infantibus quoque decerni- "mus, quoties non inveniuntur firmi teſtes qui eos abſque "ulla dubitatione baptiſatos eſſe dicant, nec ipſi, propter "ætatem de ſibi tradito myſterio aptè reſpondere poſſint, "debere abſque ulla offenſione baptiſari." When the ſeſſion ſhould be ſponſor.

§ 6. By the 4th article, cap. 11. of the French church-diſcipline, the children of fathers and mothers of the Ro-

baptism not to be imposed. The age and qualifications of a sponsor.

mish church, and of excommunicated persons, cannot be admitted into the church, though they were presented by believing sponsors, unless their fathers and mothers consent to it, and desire it, in quiting and yielding up to the sponsors their right as to instructing them; for baptism being a privilege and benefit, it is not to be imposed, nor children baptised against their parents will, into a communion whereof they are not members: hence the custom of the church, at administering of baptism, is to ask the parent or sponsor, if they present that child to be baptised? to which they declare their willingness, by their answering affirmatively. By the 10th act of the said 11th chapter, these who present children to be baptised, must be, at least, fourteen years of age, having received the sacrament of the Lord's Supper; and if they have not, that they promise faithfully to use their endeavours to prepare for it.

The use, end, and form of testimonials.

§ 7. When single persons or families remove unto other congregations, they cannot regularly there be admitted unto the benefit of the sacraments for themselves or children, till they produce a declaration of the church from which they came, testifying them to be free of any known scandal, otherways these holy things may be profaned, contrary unto that church practice and precept *sacra sacris*; of which testimonials there should a register be kept, and they run in this form: "These are to testify, that the "bearer hereof hath lived in this parish of "preceeding last bypast; during "which space he behaved himself civilly and honestly, "free of all church-censure, or public scandal known to "us. This given by command of the kirk-session of the "said parish. At the day of "years, by A. B. session-clerk."

Their import, and how and why different from testimonials, in order to the Lord's Supper.

§ 8. This testimonial imports, that the person attested is not *per famam clamojam*, or notourly scandalous, through error or immorality; but it doth not suppose him to have a competent measure of knowledge, for that is left to the trial and inquiry of the church, to which he seeks to be added as a member, therefore their judgement is never anticipate by any such clause, unless in testimonials for persons desiring the benefit of the Lord's Supper in another parish, where the pastor thereof cannot then get time to examine all strangers. It is true, when mens lives and measure

ſure of knowledge are generally believed to be good and competent, this order as to ſuch, may be diſpenſed with; yet it were to be wiſhed, that even thoſe would obſerve it, and not give occaſion to others, not ſo good or knowing, to be angry, when they are reſtricted or obliged unto it.

Form of baptiſmal engagement.

§ 9. In the baptiſmal engagement, the parent, or ſponſor, is, in name of the child, to renounce the devil and all his works, the vain pomp and glory of this wicked world, and all the ſinful luſts of the fleſh. He is to promiſe to bring up the child in the knowledge of the grounds of the Chriſtian religion, as they are contained in the holy ſcriptures of the Old and New Teſtament; and, laſtly, he is to bring up the child in that holy life and practice which God hath commanded in his word. The engagements to be given in name of children at baptiſm, ſhould be expreſt in theſe or the like general terms, conform to the Directory for worſhip, approven by the General Aſſembly, 7th Feb. 1645. The due obſervation whereof is ſeriouſly recommended by the 10th act of Aſſembly 1705.

The form of miniſtration of baptiſm and the prayer.

§ 10. The ſacrament of baptiſm is to be adminiſtrate in the face of the congregation after ſermon, and before pronouncing of the bleſſing, (ſee act of Aſſem. Feb. 7. 1645.) The child to be baptiſed, after notice given to the miniſter the day before, is to be preſented, the paſtor remaining in the ſame place where he hath preached, and having water provided in a large baſon; he is before baptiſm to uſe ſome words of inſtruction, touching the author, inſtitution, nature, uſe, and end of this ſacrament: he is alſo to admoniſh all that are preſent to repent of their ſins againſt their covenant with God, and to improve and make the right uſe of their baptiſm: next, the parent, or ſponſor, is to be exhorted to order his converſation aright, and walk circumſpectly; when he is to be engaged in the words of the form above. This being done, prayer is alſo to be joined with the word of inſtitution, for ſanctifying the water to this ſpiritual uſe. The prayer is to this or the like effect, that the Lord, who hath not left us as ſtrangers without the covenant of promiſe, but called us to the privileges of his ordinances, would graciouſly vouchſafe to ſanctify and bleſs his own ordinance of baptiſm at this time: that he would join the inward baptiſm

tiſm of his ſpirit with the outward baptiſm of water; make this baptiſm to this infant a ſeal of adoption, regeneration, and eternal life, and of all other promiſes of the Covenant of Grace; that the child may be planted in the likeneſs of the death and reſurrection of Chriſt, and that the body of ſin being deſtroyed in him, he may ſerve God in newneſs of life all his days. Then the miniſter is to demand the name of the child, which being told him, he is to ſay (calling the child by his name) "I baptiſe "thee in the name of the Father, of the Son, and of the "Holy Ghoſt." As he pronounceth theſe words, he is to baptiſe the child with water, which, for the manner of doing, it is not only lawful but ſufficient, and moſt expedient, to be by pouring or ſprinkling of the water on the face of the child, without adding any other ceremony. This done, he is to give thanks and pray to this or the like purpoſe; acknowledging, with all thankfulneſs, that the Lord is true and faithful in keeping covenant and mercy; that he is good and gracious, not only that he numbereth us among his ſaints, but is pleaſed alſo to beſtow upon our children this ſingular token and badge of his love in Chriſt; that in his truth and ſpecial Providence, he daily bringeth ſome into the boſom of his church, to be partakers of his ineſtimable benefits purchaſed by the blood of his dear Son, for the continuance and increaſe of his church; and praying, that the Lord would ſtill continue and daily confirm more and more this his unſpeakable favour; that he would receive the infant now baptiſed, and ſolemnly entered into the houſehold of faith, into his fatherly tuition and defence, and remember him with the favour he ſheweth unto his people; that if he ſhall be taken out of this life in his infancy, the Lord, who is rich in mercy, would be pleaſed to receive him up into glory, and if he live and attain the years of diſcretion, that the Lord would ſo teach him by his Word and Spirit, and make his baptiſm effectual to him, and ſo uphold him by his divine power and grace, that by faith he may prevail againſt the devil, the world, and the fleſh; till in the end he obtain a full and final victory, and ſo be kept by the power of God through faith unto ſalvation, through Jeſus Chriſt our Lord.

§ 11. By

§ 11. By the 14th article, chap 11. of the French church discipline, ministers shall reject names given to children, that savour of ancient Paganism, such as Diana, and the like; and the names attributed to God, such as Emmanual, and the like, but the names of holy men and women in scripture are to be chosen. Ministers are to reject indecent names to children.

§ 12. By the 10th act of Assembly 1690, they considering, that the parties receiving the sacraments are solemnly devoted and engaged to God before angels and men, and are solemnly received as members of the church, and do entertain communion with her; and that by former acts, viz. December 16. 1638, and Feb. 7. 1645, the private use of them hath been condemned: as also, that by allowing the private use of the same in pretended cases of necessity, the superstitious opinion is nourished, that they are necessary unto salvation, not only as commanded duties, but as means without which salvation cannot be attained, therefore they discharge the administration of the Lord's Supper to sick persons in their houses, and all other use of the same, except in the public Assemblies of the church; and also, they discharge the administration of baptism in private, that is, in any place, or at any time, when the congregation is not orderly called together to wait on the dispensing of the word, which is agreeable to the 6th article, chap. 11. of the French church-discipline, and not to be dispensed with, except in times of persecution; and when a child is baptised in a private house, as is used in England, in that case the minister is to certify the congregation to which the child belongs, that the same was baptised by him, at such a time, and in such a place, before divers witnesses. By the 31st can. conc. 6. in Trullo: "Clericos qui in oratoriis quæ "sunt intra domos sacra faciunt vel baptizant hoc illius "loci episcopi sententia facere debere, decernimus. Qua-"re si quis clericus hoc non sic servaverit, deponatur." Private use of sacraments condemned.

§ 13. There is a register to be kept of the names of all baptised, and of their parents names and designations, and of the time of their baptism, and of the names of the witnesses thereto; and of all illegitimate children their names, and those of their parents shall be likewise insert: But of such it is only said, that they are not born in lawful marriage. When it is an incestuous child, it shall suffice Register of baptism.

suffice to name the mother, with the presenter of the child, that the remembrance of so heinous a sin may be extinguished. This is conform to the 19th article of the foresaid 11th chapter.

Baptism to be but once administered.

§ 14. Baptism is not to be administered but once unto any person. It is not the practice of the reformed churches to re-baptise those who were baptised by the Popish clergy; for they baptise with water in the name of the Father, Son, and Holy Ghost, as we do. But Quakers, and others, who want this external seal of the Covenant of Grace, though such should make profession of the true faith, that sacrament of baptism doth remain to be administered unto them, before they or their children can enjoy the privileges of church-members.

He who baptiseth must be ordained and lawfully called.

§ 15. Neither of the sacraments may be dispensed by any but a minister of the word, lawfully ordained, saith our Confession of Faith, cap 27 art. 4; and persons are to be baptised by a minister of the gospel lawfully called thereunto, according to art. 2. cap. 28. Our law makes infeftments void and null, where they are not given by such as it appoints and authorises to give them: thus are all infeftments in royal burghs, not given by some of the magistrates or clerks thereof Yet baptism, when it is administered by a person, whose ordination and call is not agreeable to the principles, constitutions, and practice of this church, the essentials of the sacrament being observed, that baptism is esteemed as valid, though not as lawful. And although the reformed churches, (so far as I can learn) would inflict the highest censure upon women or laicks, as profaners and mockers of the holy sacraments, if they presumed to dispense them, and would not have the least scruple to baptise those on whom they had wickedly usurped a power to impose a mock of it; yet I find they have declined to determine so clearly in the case of re-baptising of these who were baptised by deposed ministers; which, I think, doth not proceed so much from the want of a parity of reason, as it doth from the offence, which may sometimes be taken by a great part of a church, who do not understand, or are not satisfied with the grounds of their deposition, or perhaps may be altogether ignorant of their being deposed: but when a deposed minister hath so little interest,

eſt, and ſo few followers, that he is eſteemed by moſt, yea, by a vaſt majority, to be lawfully depoſed: in that caſe it might give offence not to re-baptiſe a child who was ſo unlawfully baptiſed.

TITLE IV.

Of the Lord's Supper.

§ 1. THE Lord's Supper, ſo called from the time of its inſtitution and firſt celebration, is a ſacrament of the New Teſtament, wherein, by giving and receiving bread and wine, according to the appointment of Jeſus Chriſt, his death is ſhewed forth, and they that worthily communicate, not after a corporal and carnal manner, but by faith feed upon his body and blood, to their ſpiritual nouriſhment and growth in grace, have their union and communion with him confirmed, teſtify and renew their thankfulneſs and engagements to God, and their mutual love and fellowſhip each with another, as members of the ſame myſtical body. What the Lord'sSupper is.

§ 2. Theſe who are to be admitted to this ſacrament, muſt be found to have a competent knowledge of the fundamentals of the Chriſtian religion, and to be of ſuch an inoffenſive walk and converſation, both towards God and their neighbours, that they are not known to be guilty of any ſcandal that meriteth church-cenſure. By the 12th chap. of the French church diſcipline, art. 2. perſons ſhall not be admitted to the Lord's Supper, till they be above twelve years of age. But I am ſure, if children at nine years of age can expreſs themſelves piouſly and knowingly, ſhewing that they have the grace ſigniſied and promiſed, the ſeal of the promiſe cannot warrantably be denied unto them By the 6th art. of that chapter, a man that is deaf and dumb, ſhewing his piety and religion what he can, by evident ſigns, tokens, and geſtures, may be admitted to partake, when by a long experience of the holineſs of his life, the church ſhall perceive he has faith. By the 7th art. thereof, the bread of the ſacrament is to be adminiſtered to thoſe who cannot drink wine, they proteſting that it is not through contempt, and they doing what they can towards it, by putting the cup as near Who may be admitted thereto, and who not.

their mouth as they may do, to avoid giving any manner of offence. And by the 10th art. of the same 12th chapter, they say, in as much as several sick persons come to receive this sacrament, which gives occasion that severals make scruple of drinking the wine after them, the pastors and elders shall be warned to take good heed that care and prudence be used in this matter; they may communicate last.

The ordinary elements to be used in the Lord's Supper.

§ 3. Ordinary bread is to be used; and it is most decent it be leavened wheat bread. Any kind of wine may be used in the Lord's Supper, yet wine of a red colour seemeth most suitable. In case a society of Christians should want the fruits of the vine of all sorts, I cannot think but it might be supplied by some composure as like unto it as could be made: and if any church laboured under that invincible necessity, were it not safer for them to interpret that as a call and warrant to communicate, though wanting the fruit of the vine, than to construct it an authorising them in a perpetual neglect of that sacrament?

Communicants to be recorded by the session's order, and admitted by their sentence after trial.

§ 4. When the admission of these who are allowed to partake of the Lord's Supper, is once recorded by a sentence of the church session, which is to proceed either upon the minister's examining of the parties in their presence, or at least of two or three of the elders, that so the rest may pass their sentence on their testimony and report; in that case there will never be any necessity of coming afterwards to ministers and elders for re-admission, unless by after-scandal they be judicially suspended from that privilege. See the vindication of presbyterial government, printed at London 1659, page 143. See § 6. and 16. of this title.

How strangers are admitted with, and how without testimonials.

§ 5. When the sacrament of the Lords Supper is to be celebrated in a neighbouring congregation, who have not leisure, and whose work is not to examine strangers, (as above) the minister, or any two elders in his absence, may give testimonials, yea, should give to any of their parish who communicate ordinarily at their own parish church, and are without scandal in their life for the time, who are thereupon to be admitted *ex debito*, and by reason of the communion of saints. But this is not to prejudge the admission of any honest person, who occasionally is in the place

place where the communion is celebrate, or such as by death or absence of their own minister or elders, could not have a testimonial. Act of Assembly Feb. 7. 1645, art. 12. about uniformity of worship.

§ 6. By the 11th act of Assembly 1706, it is recommended to all ministers, to take as strict a trial as can be of such as they admit to the Lord's Supper, especially before their first admission thereto, and that they diligently instruct them, particularly as to the Covenant of Grace, and the nature and end of that ordinance as a seal thereof, and charge upon their consciences the obligations they lie under from their baptismal covenant, and seriously exhort them to renew the same. This fully answers the end that any Protestant bishop can have in ministering of confirmation, or laying on of hands upon those that are baptised and come to years of discretion: neither doth it savour of any superstition, or any scandalous-like approach to the Papists their confirmation (by chrism on infants) for the receiving of the Holy Ghost, which is nothing else but an audacious and appish imitation of conveying miraculous operations by the apostles hands. Ministers behaviour, especially with persons when first admitted.

§ 7. It is agreeable to the law of nature to seek and promote the good of others, according to our ability and opportunity, by admonishing them to forbear sin, and repent for it, Lev. xix. 17. "Thou shalt not hate thy brother in thy heart; thou shalt in any wise rebuke thy "neighbour, and not suffer sin upon him." See Matth. xviii. 15. I suppose that the sovereigns on earth did publish their intentions of pardoning all traitors, who should express their sorrow and hatred at former treasons; and as a mean to reduce them to that happy temper, had strictly commanded and required all their good subjects, to put them in mind of the ingratitude, folly, and danger of their treason: would not we conclude, that a neighbour seeing his fellow commit treason, and not reproving him therefor, did neither regard his sovereign's honour and authority, nor yet valued his neighbour's happiness? how much more justly may our Lord and Saviour load and charge church-rulers with this sin, if they fail to perform that duty, seeing he hath laid his special commands upon them to do it? and therefore, if any elder or minister, shall suffer one whom they know to be guilty of some Persons guilty of more private scandals, how to be admitted.

ſcandalous or heinous ſin though not public, to approach unto the Lord's table, without ſatisfying acknowledgements made in private for it, they do thereby, for ought they know, ſuffer him to partake of that holy Supper with unrepented ſin upon him.

Perſons who converſe not together, how to be admitted.

§ 8. As there are divers kinds of good gifts, ſo there are divers degrees of them, according to which we may and ought to love our neighbour, more or leſs, becauſe we are commanded to do good unto all men, both with our ſpiritual advice, and with our worldly goods, miniſtering to their neceſſities, but eſpecially unto them who are of the houſehold of faith, Gal. vi. 10. We are bound to ſhew our love to our enemies, by overcoming evil with good, Rom. xii 21; which is the way, not only to be even with them that wrong us, but to be above them. Every man is called to provide for his own, eſpecially for thoſe of his own houſe, 1 Tim v. 8. We are to have a natural affection for ſuch as be near to us in blood, and the want thereof is diſcovered by their want of converſe. The apoſtle, 1 Cor. v. 11. forbids to keep company with ſome ſcandalous perſons, and admitting that precept to be prohibitive of a civil intimacy, it holds as a ſtronger argument againſt religious communion with, or at leaſt admiſſion of them to ſuch a diſtinguiſhing ordinance. Solomon, Prov. xxii. 24 forbids us to go into the company of a furious man, and to converſe frequently and familiarly with an angry man, as friends uſe to do. So that, though there are common offices due to all men, yet that diſtinguiſhing practice of friends in frequent converſing together, is free and optional, as the beſtowing of gifts is. Indeed, when notour ſcandalous breaches and differences do happen, in that caſe, the parties ſhould be obliged to a formal agreement, by converſing in preſence of thoſe whoſe work it is to compoſe ſuch differences; but even then, they can be obliged to continue in no more friendſhip than a common converſe imports, eſpecially the leſed party. They may be indeed both obliged to profeſs a ſincere reconciliation, though not unto a familiar converſation. But as to the uſual converſe with thoſe of our houſehold and blood-relations, as huſband with wife, and father with children, or the like, it is agreeable both to the laws of nature and intereſt,

intereſt, firmly to preſerve and perſevere in that. Wherefore, upon the whole, where ſuch near relations refuſe uſual converſe with one another, or neighbours at variance, ſhall refuſe to renew or continue a common converſe, in that caſe neither of the guilty parties ought to be admitted to the Lord's table.

Perſons ſcandalous *per famam clamoſam*, how to be admitted or atteſted.

§ 9. *Fama clamoſa, publica & frequens*, doth ſupply the part of an accuſer, ſo that any who lie under the laſh of ſuch reports, muſt be ſo far from being admitted to the Lord's table, or yet atteſted of, as free of ſcandal, that they ſhould be proceſſed thereupon, and have the benefit of neither, till they juſtify themſelves; ſee tit. of viſitation of families.

How to admit thoſe who take ſome different methods from the church.

§ 10. When one church government is eſtabliſhed, if the church ſhall even then be ſo unhappy as to be afflicted, with ſchiſm from thoſe who own the ſame; in that caſe, there ought to be union and communion ſought and admitted, notwithſtanding failings and defects of ſeveral kinds, providing union and communion may be had without acceſſion to the guilt or defects of others: that is, without being obliged to approve of them, or condemn in our own practice what we judged right, or that we be not by any engagement reſtrained from a duty. Indeed where there is no union in church government, Mr Durham on Scandal, chap 13. ſays, he cannot, nor dares not offer any directions for making up an union here. As for allowing theſe who in their judgement differ about church-government to communicate with us, it is ſafer to allow them to communicate with us, than for us to communicate with them; for by this way, they may be brought unto us, and we out of hazard of being led away by them. But for all this, ſuch perſons are not to be admitted, if they be in their practice culpable of any thing which would juſtly keep back thoſe of our own communion; that would be truly a contracting of too much guilt, for gaining of any occaſional proſelyte or communicant.

How theſe who are guilty of national ſins ſhould be admitted.

§ 11. When there hath been a great and general defection by a church and kingdom, then the national Aſſembly uſeth to appoint a national faſt and humiliation for theſe cauſes. See the act for a faſt November 12. 1690. And whoever had been guilty or acceſſory to the ſins and evils therein acknowledged, if they joined in the public faſting, they

they did thereby acknowledge the cauſes thereof to be juſt and true, and profeſſed their ſorrow and humiliation therefor: wherewith the ſeſſion ought to be ſatisfied, if they ſignify their meaning to have been ſo, or that they judge the cauſes of the faſt true and relevant.

How non-communicants ſhould be treated.

§ 12 By the act of Aſſembly 3d Auguſt 1642, every preſbytery is enjoined to proceed againſt non-communicants; and by the 11th art. cap. 12. of the French church-diſcipline, theſe who have been a long time in the church, and will not communicate of the Lord's Supper, if they do it through contempt, or for fear of being obliged to forſake all manner of idolatry, after ſeveral admonitions, they ſhall be cut off from the body of the church; but if it be through infirmity, they ſhall be borne with for ſome time, until they can be eſtabliſhed. And by the act of parliament 16th James VI. cap. 17. which is never yet reſcinded, but rather included in the acts made and ratified againſt profaneneſs: By it all men are to communicate once a year, without reſpect to the excuſe of deadly feuds, under pecunial pains, according to the quality of the tranſgreſſors. This act is ratified by the parliament 1641. Though people ought not, nor cannot, be compelled to communicate, yet non-communicating, not being a matter indifferent, but a palpable diſobedience to God's voice in the goſpel, (Luke xxii. 19.) they ought to account for that ſcandalous neglect and intermiſſion, before they be of new admitted.

The deſign and diſtribution of tickets.

§ 13. None muſt preſume to ſit down at the Lord's table but ſuch are admitted according to order, except thoſe whoſe fitneſs is unqueſtioned and notour. Each perſon, before communicating, doth deliver the pariſh lead ticket, when ſought for, to one of the elders or deacons when ſitting at the table: but it were ſafer to demand theſe warrants or tokens at their entry to the tables; for a perſon unwarily or deſignedly approaching to the table without a token, may, with leſs obſervation or offence, be thus kept from it, than raiſed from it. Theſe tickets are diſtributed by the ſeſſion, or members thereof, by their allowance, to ſuch as they have admitted, or know to be lawfully atteſted from other pariſhes.

Fencing and opening of the tables. Its uſe and end.

§ 14. The miniſter and ſeſſion having, according to the rules of diſcipline, admitted unto, or debarred perſons from the Lord's table, the paſtor doth now, immediately before he

he read the words of inſtitution, doctrinally debar from, and inviteth all unto the Lord's table, according to the ſtate and condition they really are in. If there has been an unexactneſs or omiſſion in the exerciſe of diſcipline, through which ſome are admitted whom the word of God forbids to approach on their peril, this doctrinal debarring may ſcar ſuch from partaking: but if there hath been an imprudent and uncharitable exerciſe of diſcipline, in debaring of ſome wronguouſly, then the paſtor's doctrinal opening of the tables, and inviting ſuch from the word of God to approach, although debared by the key of diſcipline, may nevertheleſs comfort themſelves in the Lord, who will be a little ſanctuary unto them who are thus roughly and indiſcreetly treated by the watchmen. From all which we may gather, that it is ſafer to err on the right hand of charity, than on the left hand of ſtrictneſs and ſeverity: The civil law gives this rule, "Semper in dubiis benig-" niora præferenda ſunt."

§ 15. It is ſo far from being a warrant, and ſatisfying to a man's conſcience, for approaching the Lord's table, becauſe the diſcipline of the church admits him, that even a man habitually gracious and prepared, will not for ordinary adventure to approach it, except he hath made conſcience of getting himſelf actually prepared, and his graces put in exerciſe, and ſet apart ſome conſiderable time for that purpoſe. Secret preparation.

§ 16. By the act of Aſſembly 7th February 1545, about the obſervation of the Directory in ſome points of public worſhip, congregations are ſtill to be tried and examined before the communion. Item, That when the communion is to be celebrate, one miniſter may be employed for aſſiſting the miniſter of the pariſh, or at the moſt two. Item, That there be one ſermon of preparation delivered in the ordinary place of public worſhip, upon the day immediately preceding. Item, That the miniſter who cometh to aſſiſt, have a ſpecial care to provide his own pariſh. Item, That before ſerving of the tables, there be only one ſermon delivered to theſe who are to communicate, and that there be one ſermon of thankſgiving after the communion is ended. Item, When the pariſhioners are ſo numerous, that many of them cannot conveniently have place, in that caſe, the brother who aſſiſts the miniſter of the pariſh is to preach Public preparation.

preach to them who are not to communicate that day, which is not to begin until the ſermon in the kirk be ended, to wit, ſermon in the forenoon

The preſent practice.

§ 17. But by the preſent practice, the Thurſday, or ſome other day of the week, preceding the communion, is kept as a faſt day, on which there are three ſermons, delivered by ſo many neighbouring miniſters, which yet to ſome ſeems not very proper; for the deſign of that day being a congregational faſt, on which the ſins of that pariſh are to be mourned over before the Lord, no other minister can have ſuch particular knowledge thereof, as he who labours and travels among them. Upon Saturday there are are two preparation ſermons, and upon the Lord's day there in ſome churches two action ſermons, beſides the thankſgiving in the afternoon; and on the Monday there are two thankſgiving ſermons. There will be at theſe occaſions, three, five, or perhaps more miniſters aſſiſting the paſtor of the congregation, becauſe of the great confluence of people that reſort thereto. Intimation of the celebration of the Supper, is made two or three Sabbaths before: (the Directory ſpeaks but of one) and on the Sabbath immediately preceding public intimation is made of the faſt.

What intervenes betwixt the action-ſermon and the action itſelf.

§ 18. Upon the day of the communion, a large table being ſo placed as the communicants may beſt ſit, and the congregation may both ſee and hear, the public worſhip is begun as on other Sabbaths: and immediately after ſermon, the miniſter prays and ſings a part of ſome pſalm; then, having had an exhortation, he deſires the elders and deacons to bring foreward the elements, while he cometh from the pulpit, and ſitteth down at the table, and the congregation again ſing; thereafter he ſenceth and openeth the the tables, as before was ſaid The bread now ſtanding before him in large diſhes, fitly prepared for breaking and diſtribution, and the wine in large cups, he reads, and may ſhortly expound the words of inſtitution, 1 Corinth. xi. 23.—27. Next, He uſeth a prayer, wherein he both giveth thanks for the ineſtimable benefit of redemption, and prays to God to ſanctify the elements, and accompany his own ordinance with the effectual working of his Spirit.

The miniſter's behaviour at the action.

§ 19. The elements being thus ſanctified by word and prayer, the miniſter is to take the bread, and ſay, according to the holy inſtitution, command, and example of our bleſſed

bleſſed Lord and Saviour Jeſus Chriſt, I take this bread, and having given thanks, I break it, and give it unto you, Take ye, Eat ye, this is the body of Chriſt which is broken for you, do this in remembrance of him. In like manner, the miniſter is to take the cup, and ſay, according to the inſtitution, command, and example of our Lord Jeſus Chriſt, I take this cup, and give it unto you. This cup is the New Teſtament, in the blood of Chriſt, which is ſhed for the remiſſion of the ſins of many, drink ye all of it; for as oft as ye eat this bread, and drink this cup, ye do ſhew the Lord's death till he come. If the miniſter have no other brethren aſſiſting him in the adminiſtration, from whom he is rather to take the communion at the next table, he is to communicate himſelf at the firſt breaking of the bread, and diſtributing the cup.

Service of tables by elders and deacons.

§ 20. All the while the elders and deacons in a competent number, and in a grave and reverend manner, do attend about the table, to ſee that none be admitted without tokens, as in the 13th ſect. of this title, and that all who are admitted, may have the bread and wine in their own place and order of ſitting, which is without difference of degrees, or reſpect of perſons.

The behaviour of miniſters and communicants during the ſervice.

§ 21. By the laſt-mentioned act of Aſſembly, there is to be no reading in the time of communicating, but the miniſter maketh a ſhort exhortation at every table; that there be ſilence during the time of the communicants receiving, only the miniſter may drop a ſhort and ſuitable ſentence. By that ſame act, the diſtribution of the elements among the communicants is to be univerſally uſed, after the miniſter hath broken and delivered it to the neareſt. Item, That while the tables are diſſolving, and filling, there be always ſinging of ſome portion of a pſalm. Item, That the communicants, both before their going to, and after their coming from the table, ſhall only join themſelves to the preſent public exerciſe then in hand. Item, That none of thoſe who are preſent in the kirk, where the communion is celebrate, be permitted to go forth till the whole tables be ſerved, and the bleſſing pronounced, unleſs it be for more commodious order, and in other caſes of neceſſity.

Exhortation and thankſgiving after all have communicate, and the concluſion.

§ 22. The laſt table, after they have received, ordinarily ſitteth ſtill, to avoid any trouble by going to their own

own places. Then the minister goes to the pulpit, where, in a few words, he putteth them in mind of the grace of God in Jesus Christ, held forth in this sacrament, and exhorts them to walk worthy of it. Then he gives solemn thanks to God for his rich mercy in Jesus Christ, begs his pardon for the defects of the whole service, and intreats his assistance to walk as becometh those who have received so great pledges of salvation, and then concludes with the usual petitions in the public prayers of the church. After prayer, all join in singing a part of a psalm suitable to the occasion, and are dismissed with the blessing.

The frequent celebration of the Lord's Supper recommended.

§ 23. In the manuscript acts of Assembly, there is an act, December 1562, appointing the communion to be celebrate four times a-year in towns, and twice-a year in country parishes; yea, it was administered then once a month, as may be seen by the old discipline bound in with the old psalms, and forms for prayer in Mr Knox's time. And by the 14th article, cap. 12. of the French church-discipline, it is recommended to their national synod, to give directions about the more frequent celebration of the Lord's Supper, and their custom then was four times a-year: but our acts of Assembly 1638, sess. 23. act 12. act 19. of Assembly 1701, and Directory for worship, do only recommend the frequent celebration of the Lord's Supper; but how often is to be determined by the kirk-sessions, as they shall find most convenient for the people, their comfort and edification. These recommendations seem to be treated with little or no regard among us; for as yet, so far as I know, not one parish hath celebrate it once more than ordinary upon their account. I am sure, if they would have it but once a-year, yet parishes in the neighbourhood may so correspond, as to have it in that bounds all the months of the year, which will supply the want of its frequency in one parish, at least unto such as may well travel unto their neighbour churches.

How communion elements are paid, and applied when the communion is not celebrate.

§ 24. By the act James VI. parl. 3. cap. 24. *sub. fin.* the parsons of all parish-kirks are to furnish bread and wine to the communion so oft as it shall be administrate. And by the act of Assembly 1638, sess. 23. art. 12. where the minister of a parish has only allowance for furnishing communion elements once a year, it is declared, that the charges should rather be paid out of that day's collection, than

than that the congregation want the more frequent use of the sacrament. Spanhemius, in his introduction to sacred history, tells us, that in the second century, the Lord's Supper was then expressed by several names, and among others, it was called the OBLATION, from the people's offering the bread and wine: And truly, if the people were desired to contribute money for that end, it were but reasonable, and not to be grudged, even though it were but once a year celebrated, where the minister has no allowance even for that once, and wants likewise a legal maintenance allocated and secured unto him: but where the communion is but once a year, and the minister hath a legal stipend secured to him, he ought to be discharged to take or defray the expences of the elements out of the money given and mortified for the use of the poor; and this practice is rendered yet the more scandalous and inexcusable in parishes where this sacrament is but once a year celebrate, and where there be colleagues, who have both legal stipends. The sum ordinarily modified for communion elements doth not exceed fifty merks Scots, which the heritors are liable yearly to pay, although the communion be not administrate in the parish, providing the minister offer to apply it for the use of the poor.

TITLE V.

Of the Solemnization of Marriage.

§ 1. MAtrimonium is defined by Modestinus to be "Maris et faminæ conjunctio, et omnis vitæ "consortium, divini et humani juris communicatio," i. e. the conjunction of man and woman to be comforts for all their life, with a communication of rights divine and human. By the laws of the church of England, as they are reformed by Henry VIII. and Edward VI. in the latter edition printed at London 1641, marriage is defined "Legitimus contractus mutuam et perpetuam viri cum "fœmina conjunctionem, Dei jussu inducens et perficiens; "in quo tradit uterque alteri potestatem sui corporis, vel "ad prolem suscipiendam, vel ad scortationem evitandam." Nuptiæ are sometimes taken pro ritu nuptiali, for wedding ceremonies. Marriage described.

Sponsalia, or espousals, what.

§ 2. The sponsalia or espousals, sunt mentio et repromissio futurarum nuptiarum, or, de futuro matrimonio. It is only a consent de presenti that makes marriage; but the consent de futuro, which is given at the contract of marriage, or proclamation of banns, is only the espousals, which are premised to marriage; it being so solemn an act, should be performed with due deliberation. By the civil law and custom of this nation, there is place, rebus integris, for either party to repent and renounce the espousals. See Stair's Instit. p. 25.; and by the 9th article, cap. 13. of the French church-discipline, though it be prohibited to marry the sister of the deceased, yet it doth not condemn marrying the sister of one contracted that is dead, because it supposes that an alliance is not consummated but by commixion of blood or sex. See the commentary on that article.

Forbidden degrees.

§ 3. Marriage ought not to be within the degrees of consanguinity or affinity, forbidden by the 18th chapter of Leviticus. The man may not marry any of his wife's kindred nearer in blood than he may of his own, nor the woman of the husband's kindred nearer in blood than of her own, (see the Confession of Faith) otherwise the marriage may be declared to have been null. A man may marry any of his wife's allies, or a woman any of her husband's allies, "nam non datur affinitas affinitatis."

Marriage may be declared null upon impotency, and when not.

§ 4. Marriage being ordained for the increase of mankind, and for preventing of uncleanness, persons naturally impotent are therefore incapable to marry; yet by the laws of the church of England, as reformed by King Henry VIII. and King Edward VI. de Matrimonio, cap. 7. their canon runs thus: "Verum si nota sit utrique perversitas, et tamen mutus perducet de matrimonio consensus, nuptiæ procedant; quoniam volentibus nulla injuria potest fieri."

Who cannot consent cannot marry.

§ 5. These who cannot consent, cannot marry, such as ideots and furious persons, durante furore; neither they who have not the use of their reason, as infants and those under age, who are not come to the use of discretion, that is when the person is within the years of pupillarity, commonly established in law to be fourteen in males, and twelve in females, nisi malitia suppleat ætatem, which without

out further probation declares them to be arrived at that discretion which fits them for marriage.

Consent of parents, and of promises of marriage made by minors.

§ 6. If it be asked, whether the consent of parents, curators, or nearest friends in their place be essential to marriage? The common sentence will resolve it, "Multa "impediunt matrionium contrahendum, quæ non dirimunt "contractum:" so that their consent becomes necessary, as it were, "necessitate præcepti, sed non necessitate me-"dii." And by an overture of Assembly, June 4. 1644, it is proposed to be considered on, and reported by the presbyteries, that promises of marriage made by minors, to women with whom they have committed fornication, be declared null and of no effect; especially when the youth is not willing to observe the same, because his parents threaten him with the loss of their blessing and of his birthright. This is proposed as being agreeable to the word of God.

Errors that annul the consent in marriage.

§ 7. Errors in the substantials make void the consent, unless future consent supervene, as it did in Jacob, who supposed that he had married and received Rachel, but by mistake got Leah; yet was content to retain her, and to serve for the other also: but errors in qualities or circumstantials vitiate not, as if one supposing he had married a maid or chaste woman, had married a whore, according to Stair's Institutions, page 26. Yet by Deuteronomy xxii. 21. that error seemeth to be accounted substantial; for, by that text, a woman so deceiving a man was to be put to death; and by the 38th art. cap. 13. French church-discipline, if it should happen, that after contracts and promises made, and before the accomplishment of marriage, the bride is found to have committed fornication, before or after the said promises, and that it was unknown to him who had promised her marriage, the consistory may proceed to a new marriage; and the bride shall have the same liberty, if it be found that the bridegroom has been guilty of fornication before the said promise. By the 5th art. cap. 24. of our Confession of Faith, that case is only determined thus far, viz. adultery or fornication committed after a contract, being detected before marriage, giveth just occasion to the innocent party to dissolve that contract, and they support this from that scripture, Matth. i. 18. 19. 20.

§ 8. Parties

Teſtimonials for marriage.

§ 8. Parties cannot be married without they be known to be ſingle perſons, either by the miniſter's own proper knowledge, or by a teſtimonial from ſome miniſter, elders, or ſeſſion, bearing the ſame: but albeit they cannot procure a teſtimonial in common form, through their being ſcandalous, yet the benefit of marriage cannot be denied them after the proclamation of banns. But by the 21ſt art. cap. 23. of the French church-diſcipline, if one of the parties who deſire to be married is excommunicated, the marriage ſhall not be admitted in the church, unleſs the excommunicate perſon make confeſſion of his faults; but thoſe that are ſuſpended from the Lord's Supper they allow to be married.

Marriage with Papiſts.

§ 9. By the 3d article, chap. 24. of our Confeſſion of Faith, ſuch as profeſs the true reformed religion, ſhould nor marry with Infidels, Papiſts, or with other idolaters, or with ſuch as maintain damnable hereſies. And in purſuance of that, by an overture of the Aſſembly 1701, the tranſgreſſors were to be excommunicated. But our ſtateſmen diſliking the ſame, this overture in the Aſſembly 1704, act 22. iſſued only in a recommendation. By the 72d canon concilii ſexti in Trullo, it is determined thus; "Non licere virum orthodoxum cum muliere hæretica "conjungi, neque vero orthodoxum cum viro hæretico co- "pulari, ſed & ſi quid ejuſmodi ab ullo ex omnibus fac- "tum apparueret, irritas nuptias exiſtimare & nefarium "conjugium diſſolvi." But if two infidels marry, and one of them becometh Chriſtian, the perſon converted is not thereupon warranted to deſert or put away the other party who continues blind, 1 Cor. vii. 13. 14.; and by can. 31. Concilii Laodiceni, "Quod non oportet cum "omni hæretico matrimonium contrahere, vel dare filios "aut filias, ſed potius accipere ſi ſe Chriſtanos futuros "profiteantur." And by the 20th article, cap. 13. of the French church-diſcipline, when one of the parties is of a contrary religion, the purpoſes of marriage ſhall not be publiſhed in the church, until the party doth publicly profeſs in the church, that with full reſolution he renounceth all idolatry and ſuperſtition, particularly the Maſs; and if any paſtor or conſiſtory do otherwiſe, they may be ſuſpended or turned out of their office: thus difference in religion juſtly impedes but doth not annul marriage.

§ 10. If

§ 10. If parties delay their marriage forty days after proclamation, they are to be put to the renewing of the ſame before they be married; and the French diſcipline, cap. 13th art. 26. doth recommend not to delay the celebration, after proclamation of banns, above ſix weeks, to prevent inconveniencies and ill conſequences. The reſiling of parties after proclamation, is commonly called among us, a ſcorning of the kirk, though the injury or affront redounds moſtly againſt themſelves, and not ſo much upon the congregation. Indeed, if it could be known that parties never had a ſerious purpoſe for marriage, but only from a profane, making, and vain temper, had deſired themſelves to be proclaimed; in this caſe, they deſerve to be treated as mockers of God and his people. There are other ways whereby God and his church may be mocked, when perſons, who be ſound in body and mind, are given up to be minded in the public prayers of the church, when they are truely diſtreſſed in neither, the authors of which mocking and forgery deſerve to be proceeded againſt with the cenſures of the church.

Marriage delayed forty days after proclamation and ſcorning the kirk.

§ 11. Adultray and willful deſertion do not annul the marriage on any abſolute neceſſity, but they are juſt occaſions upon which the perſons injured may annul it, and be free; otherwiſe, if they pleaſe to continue, the marriage remains valid, excepting when the adultery is committed or accompanyed with inceſt, as if a man ſhould ly with his wife's ſiſter, in which caſe the wife cannot free herſelf from the ſcandal of inceſt, if ſhe, after knowledge thereof, continue to co-habit with him as her huſband. And by the parl. 1573. cap. 55. it is ordered, that the deſerter, after four years wilful deſertion without a reaſonable cauſe, muſt be firſt purſued, and decerned to adhere, and being thereupon denounced, and alſo after private and public admonitions by the church, excommunicate, the commiſſaries are warranted to proceed to divorce. But ſimple abſence will not be accounted wilful deſertion, if he be following any lawful employment abroad. In caſe then, a party be out of the country, I ſee not how this order can be uſed and proceeded in, unleſs it were ſufficiently verified and made appear, that he knew of his being cited before their conſiſtorial courts, and that his abſence was wilful and not neceſſary.

When adultery and wilful deſertion annul marriage.

§ 12 A

Re-marrying in case of divorce or proven adultery.

§ 12. A party divorced for adultery may marry again, so it be not to those with whom the adultery, upon which the divorce proceeded, was committed: for marriage between such is declared null, and the issue inhabile to succeed to their parents as heirs, parl. 1600. cap. 20. yea, it seems agreeable to equity and reason, that where adultery was proven, albeit no divorce ensued, in that case the adulterers cannot marry together. Which agrees with the Civilians, that, "Dolus malus facit cessare quodcun-"que privilegium, fraus enim nemini debet patrocinari "imo punienda."

Force annulls marriage.

§ 13. Marriage contracted with a woman ravished or violently taken away and still reclaiming, is annulled from the beginning; see Mackenzie & Mathæus de Raptu: and to this agrees that forecited book of the ecclesiastical laws of England, cap. 12. *de matrimonio.* But I am sure it is unjust to treat their children as sons of whores; See lib. 3. tit. Ravishers of women.

Time and place of marriage.

§ 14. After banns have been lawfully proclaimed, and none found objecting against the marriage, the same may thereafter be celebrate in private houses, before witnesses, as the custom is now become, upon any week-day, not being a fast-day. Albeit by the Directory for worship, it is publicly to be solemnized in the place appointed by authority for public worship, before a competent number of credible witnesses, and they advise that it be not on the Lord's day. I am sure, seamen who are to loose and go to sea on Monday, may marry on the Saturday as well as on the Sabbath before

No marriage without proclamation of banns, unless the presbytery dispense therewith.

§ 15. Marriage without proclamation is discharged, as having dangerous effects, excepting where the presbytery, in some necessary exigences, dispense therewith, Assembly 1638. sess. 23. art. 21. Assem. 1690. sess. 12. Before any proclamation of banns be made, the names of parties, and there parents, tutors, or curators, are to be given up to the minister, that the consent of friends may be known, and the proclamation is to be made before divine service begin, for three several Sabbaths; the parties named being designed as fully as they use to be in writes or contracts of marriage, and in collegiate churches, the proclamation is to be in every church of the town, Assem. 1699. sess. 5. By the 18th art. 13th cap of the French church-

church-diſcipline, theſe who live in places where the uſual exerciſes of religion is not eſtabliſhed, may cauſe their banns to be publiſhed in Romiſh churches, in as much as the matter is partly of a political nature. And by the 22d article of that chapter, the banns of widows who remarry ſhall not be publiſhed in the church, till ſeven months and two weeks, at leaſt, after the deceaſe of their former huſbands, to avoid the ſcandals and inconveniencies that may happen by it, unleſs it ſo happen, that the magiſtrates order may interpoſe to the contrary.

Clandeſtine marriage, what; its puniſhment and cenſure.

§ 16. One may be clandeſtinely married, either when banns are not proclaimed, or when the marriage is celebrated by one not ordained and admitted by the church, nor authorized by the ſtate. By our acts of parliament William's parl. ſeſſ. 5. cap. 12. the perſons clandeſtinely married, may now be proſecuted by every procutaror fiſcal. And by cap. 6. ſeſſ. 7. parl. K. William, perſons clandeſtinely married, are obliged, when required, to declare the name of the celebrator, and witneſſes, under the pains following, viz. each nobleman 2000 l. the landed gentleman 2000 merks, any other gentlemen or burgeſs 1000 l. and any other perſon 200 merks, and to be impriſoned till they declare and pay. The celebrator is puniſhable by the council, not only with baniſhment, but in ſuch pecunial or corporal pains as they ſhall think fit; the witneſſes are made liable in the ſum of 100 l. None of the parties (if both be reſiding in Scotland) ſhall get themſelves married in England, or Ireland, without proclamation of banns in Scotland, and againſt the order of the kirk, under the pains as aforeſaid, which are always without prejudice of kirk-cenſure. And there is no doubt they ſhould be rebuked as unneceſſary tranſgreſſors of a very comely and rational church-order.

Objectors againſt the marriage on that day ought to find caution.

§ 17. By the form of ſolemnization of matrimony, preſcribed by the church of England, in the book of Common Prayer, if any man upon the day of marriage, do alledge and declare any impediment, why the parties may not be coupled together in matrimony, by God's laws, and the laws of the realm, and will be bound, and ſufficient ſureties with him, to the parties, or elſe put in a caution (to the full value of ſuch charges as the perſons to be married do thereby ſuſtain) to prove his allegation; then the ſolemnization muſt be deferred until ſuch time as the truth be tried.

Form of solemnization of the marriage covenant.

§ 18 After the purpose of marriage hath been orderly published, the minister is first to pray for a blessing upon the parties appearing to be married: which being ended, he is briefly to declare unto them out of the scripture the institution, use, and ends of marriage, with the conjugal duties. Then he is solemnly to charge the persons to be married, that they would answer as in the sight of God, to whom they must give a strict account at the last day, that if either of them know any cause, by pre-contract or otherwise, why they may not lawfully proceed to marriage, that they now discover it. The minister, if no impediment be acknowledged, shall cause first the man take the woman by the right hand, saying these words. "I, *N.* do take thee *N* to be my married wife, and do, "in the presence of God, and before these witnesses, "promise and covenant to be a loving and faithful hus-"band unto thee, until God shall separate us by death." Then the woman shall take the man by the right hand, saying these words. "I, *N.* do take thee *N.* to be my married "husband, and I do, in the presence of God, and before "these witnesses, promise and covenant, to be a loving, "faithful, and obedient wife unto thee, until God shall "separate us by death." Then without further ceremony, the minister shall pronounce them to be husband and wife, according to God's ordinance, and so conclude the action with prayer.

Register of marriage and baptisms; how to bear faith.

§ 19. By the Directory for worship on this head, a register is to be carefully kept, wherein the names of the parties so married, with the time of their marriage, are forthwith to be fairly recorded, for the perusal of all whom it may concern. And that the registers of baptisms and marriages may bear the greater faith, it is fit they be subscribed on each page by the minister; or, in a vacancy, by two elders, and the clerk of the session.

TITLE VI.

Of Visitation of the Sick.

Ministers, elders, or deacons, should be cautious in

§ 1. WE are admonished by the Apostle Paul, 1 Cor. x. 32. to give offence neither to the Jews, nor to the Gentiles, nor to the church of God. By the

41st

41ſt canon *Concil Carthagin.* "Clerici ad viduas vel vir- being alone
"gines non ingrediantur, ſed cum con-clericis, vel ubi with unmar-
"adſunt clerici, vel aliqui bonæ exiſtimationis Chriſtiani." ried women
And by the act of Aſſembly Auguſt 24. 1647. ſeſſ. 19. when ſick or
art. 13 ſometimes the perſon troubled may be of that con- in trouble.
dition, or that ſex, that diſcretion, modeſty, or fear of ſcandal, requireth a godly grave friend to be preſent, when the paſtor is viſiting the troubled perſon.

§ 2. It is the miniſter's duty to admoniſh, exhort, re- Miniſters and
prove, and comfort theſe committed to his charge, upon people are
all ſeaſonable occaſions, ſo far as his time, ſtrength, and frequently to
perſonal ſafety will permit. The people are often to converſe a-
confer with their miniſter about the ſtate of their ſouls, bout their
and in times of ſickneſs to deſire his advice and help, be- ſoul-matters.
fore their ſtrength and underſtanding fail them: for this and what follows of this title, ſee the Directory.

§ 3. The miniſter being ſent for, is to repair to the The matter
ſick, and to apply himſelf with all tenderneſs and love to of his confer-
his ſoul, inſtructing him out of the ſcripture, that diſea- ence when
ſes come not by chance, or by diſtempers of body only, ſent for to
but by the wiſe hand of God; and whether it be laid up- the ſick.
on one out of diſpleaſure for ſin, for his correction or amendment, or for trial and exerciſe of his graces, or for other ſpecial and excellent ends, all his ſufferings ſhall turn to his profit, if he ſincerely labour to make a ſanctified uſe of God's viſitation, neither deſpiſing his chaſtening, nor waxing weary of his correction.

§ 4. If the miniſter ſuſpect him of ignorance, he ſhall How to deal
examine and inſtruct him in the principles of religion, and with the ig-
in the nature, uſe, excellency and neceſſity of the graces norant,
of the ſpirit of God. He ſhall ſtir up the ſick perſon to doubting and
examine himſelf, to ſearch and try his former ways, and ſecure.
his ſtate towards God. If the ſick perſon ſhall declare any ſcruple, doubt, or temptation, that is upon him, inſtructions and reſolutions ſhall be given to ſettle him. But if it appear that he hath not a due ſenſe of his ſins, endeavours ought to be uſed to convince him, of the guilt, pollution and deſert of them; and withal, to make known the danger of delaying repentance, and to rouſe him out of a ſtupid ſecure condition, to apprehend the juſtice and wrath of God, before whom none who are out of Chriſt can ſtand: care muſt be taken that the ſick perſon be not

caſt down into deſpair, by ſuch a ſevere repreſentation of the wrath of God due to him for his ſins, as is not molified by a ſeaſonable propounding of Chriſt and his merits, for a door of hope to every penitent believer

How to deal with thoſe of whoſe well-being there is ground of hope,

§ 5. If the ſick perſon have endeavoured to walk in the ways of holineſs, and to ſerve God in uprightneſs, although not without many failings and infirmities; or, if his ſpirit be broken with the ſenſe of ſin, or caſt down through the ſenſe of the want of God's favour, then it will be fit to raiſe him up, by ſetting before him the freeneſs and fulneſs of God's grace, the ſufficiency of Chriſt's righteouſneſs, and the gracious offers in the goſpel: it may be alſo uſeful to ſhew him, that death hath no ſpiritual evil to be feared by thoſe who are in Chriſt, becauſe ſin, the ſting of death, is taken away by him who hath delivered all that are his from the bondage of the fear of death. Let advice alſo be given, as to beware of an ill-grounded perſuaſion on mercy, or on the goodneſs of his condition for heaven, ſo to diſclaim all merit in himſelf, and to caſt himſelf wholly upon God for mercy, in the ſole merits and mediation of Jeſus Chriſt.

The miniſter is to pray if deſired, and for what.

§ 6. When the ſick perſon is beſt compoſed, may be leaſt diſturbed, and other neceſſary offices about him leaſt hindred, the miniſter, if deſired, ſhall pray with and for him, confeſſing and bewailing original and actual ſin, acknowledging it to be the cauſe of all miſery; imploring God's mercy for the ſick perſon through the blood of Chriſt, beſeeching that God would open his eyes, cauſe him to ſee himſelf loſt in himſelf, make known to him the cauſe why God ſmiteth him, reveal Jeſus Chriſt to his ſoul for righteouſneſs and life, give unto him his holy ſpirit to create and ſtrengthen faith, to work in him comfortable evidences of his love, to arm him againſt temptations, to take off his heart from the world, to furniſh him with patience and ſtrength to bear his preſent viſitation, and to give him perſeverance in faith to the end; that if God ſhall pleaſe to add to his days, he would vouchſafe to bleſs all means of his recovery, renew his ſtrength, and enable him to walk worthy of God by a faithful remembrance and diligent obſerving of his vows and promiſes of holineſs and obedience: and if God hath determined to finiſh his days, by the preſent viſitation, he may find

find such evidence of his interest in Christ, as may cause his inward man to be renewed, while his outward man decayeth.

§ 7 The minister shall admonish him also, as there shall be cause, to set his house in order, thereby to prevent inconveniencies, to take care for the payment of his debts, and to make restitution or satisfaction where he hath done any wrong, to be reconciled to those with whom he hath been at variance, and fully to forgive, as he expects forgiveness. He may also improve the present occasion, to exhort those about the sick person to consider their own mortality; and in health, so to prepare for sickness, death, and judgement; that when Christ, who is our life, shall appear, they may appear with him in glory. When sick persons desire the prayers of the congregation, it is like an intimation and suit to these who have any moyen with God to pray for them in secret, and continue so to do, as well as in public.

Peculiar admonitions to the sick, and exhortations to such as are present.

Why the sick roll is read in public.

TITLE VII.

Of Burial of the Dead, Lyke-wakes, and Dirgies.

§ 1. BY the Directory for worship, upon the day of burial, the dead body is to be attended decently, suitable to the rank of the deceased party, to the burial-place, and there immediately interred, without any ceremony. It is most convenient that at such occasions, we have meditations and conferences suited thereto, and that the minister, as upon other occasions, so at this time, if he be present, may put them in remembrance of their duty.

The manner of burial.

§ 2. By the old book of discipline, in Mr Knox's time, annexed to the old paraphrase of the Psalms, after burial, the minister, if present, and desired, goeth to the church, if it be not far off, and maketh some comfortable exhortation to the people, touching death and the resurrection; but by the act of Assembly 1638, sess. 23. 24. art. 22. all funeral sermons are discharged.

No funeral sermons.

§ 3. By the act of Assembly 1643, sess. 9. they discharge burials, and hanging of honours, broads, and arms of persons, of whatsoever quality, within the kirk where the people meet for public worship; for perhaps at some times the

No burial in the body of the church.

the people would be incommoded with open graves. Bishop Hall of Norwich was of opinion, that God's house was not a mere repository for the bodies of the greatest saints.

Lyke-wakes and dirgies discharged.

§ 4. By the acts of Assembly 1645, sess. 8. Assembly 1701. sess. ult. all lyke-wakes are discharged, as fostering superstition and profanity through the land. No doubt, dirgies have likewise had as bad effects; and from the same reason may be also understood to be discharged.

TITLE VIII.

Of Ministerial Visitation of Families.

Annual visitations of families, the custom of this church.

§ 1. IT hath been the laudable practice of this church, at least once a year, (if the largeness of the parish, or bodily inability, or other such like do not hinder) for ministers to visit all the families in their parish, and oftner, if the bounds be small, and they able to perform it. Among other reasons for these annual visitations of families, this may be one, that because, by the order prescribed by our Lord, Matth. xviii there may be several offences known to ministers, elders, or neighbours, which may justly keep back offenders from partaking of the Lord's Supper; and yet it were disorderly and unedifying to remove these offences in a public way. These visitations may serve to purge a congregation of such private scandals.

The design of the following overtures.

§ 2. Although in regard of the different circumstances of some parishes, families, and persons, much of the management of the work must be left to the prudence and discretion of ministers, in their respective oversights; yet these following directions are offered by Assembly 1708, April 27. as helps for the more uniform and successful management thereof, that it be not done in a slight and overly manner, which supposeth the universal practice thereof through this church, and that the total neglectors may be censured therefor as supinely negligent.

Time of visitation, its intimation, &c.

§ 3. Such a time of year is to be chosen for ministerial visitation, as the families which he visits may be best at leisure to meet with him; and if that time should happen immediately after the communion, then it is seasonable, as it were, to beat the iron while it is hot. Timeous intimation

tion is to be made to them of the viſitation; and the elder of that bounds of the pariſh which is to be viſited, is to accompany the miniſter, and they ſhould previouſly confer together concerning the condition and ſtate of the perſons and families of thoſe bounds.

§ 4. When they enter a houſe, they are to expreſs their wiſhes and deſires for the bleſſing of God upon it, and that above all, that their ſouls may proſper: Then let them take an account of the names of the family, inquire for teſtimonials from them who are lately come to the pariſh, and mark them in the roll for catechiſing, and let them take notice who can read, and of the age of children capable to be catechiſed; then the miniſter is to ſpeak to them all in general, of the neceſſity and advantage of godlineſs, of juſtice and charity towards man. Firſt work to ſalute the family, inquire for their names, teſtimonials, &c.

§ 5. He is next, more particularly, to ſpeak to ſervants of their duty, to ſerve and fear God; to be dutiful, faithful, and obedient ſervants, and of the promiſes made to ſuch, commending to them the reading of the ſcriptures, and ſecret worſhip, and love and concord among themſelves, and in particular, a holy care of ſanctifying the Lord's day. Servants ſpoken to in particular.

§ 6. The miniſter is to ſhow the children and young ſervants the advantage of knowing, ſeeking, and loving God, and remembering their Creator and Redeemer in the days of their youth, and to mind them how they are dedicated to God in baptiſm; and when of age, and after due inſtruction in the nature of the covenant of grace, to excite them to engage themſelves perſonally to the Lord, and to deſign and prepare for the firſt opportunity they can have of partaking of the Lord's Supper, to be eſpecially careful how they at firſt communicate. Children to be ſpoken to.

§ 7 Then he is to ſpeak privately to the heads of the family about their perſonal duties towards God, and the care of their own ſouls; and their obligation to promote religion and the worſhip of God in their family, and to reſtrain and get vice puniſhed, and piety encouraged, and to be careful that they, and all in their houſe ſerve the Lord, and ſanctify his day. He is more particularly to inquire, 1. Whether God be worſhiped in the family, by prayers, praiſes, and reading of the ſcripture? 2. Concerning the behaviour of ſervants towards God and towards man, Heads of families ſpoken to.

man, if they attend family and public worſhip? How they ſanctify the Lord's day? And if they be given to ſecret prayer and reading the ſcriptures? 3. If there be catechiſing in the family? If their children be trained up in reading, according to the act of Aſſembly, Aug. 10. 1648. in all which the miniſter may intermix ſuitable directions, encouragements, and admonitions as may be moſt edifying.

General queſtions and exhortations.

§ 8. The miniſter is to inquire who want bibles; and if they be not able to buy them, let the poors box be at the expences: and recommend to the heads of the family to get the Confeſſion of Faith, Catechiſms, and other good books, for inſtructing in life and faith, according to their ability. 2*do.* Thoſe who are tainted with error or vice are to be admoniſhed ſecretly, or in the family, as may moſt edify: and all are to be exhorted to carry toward ſuch as walk orderly according to the rule, Matth. xviii. 15. 3*tio.* The miniſter is to endeavour to remove diviſions in the family, or with their neighbours, and exhort them to follow peace with all men, as far as is poſſible. 4*to.* Let it be inquired who have communicated, that they may be called to an account privately how they have profited, and put in mind to pay their vows to the Lord. Confer alſo with others about the cauſes of their not communicating.

How to viſit ſuch as keep not communion with us.

§ 9. As for thoſe who pretend conſcience for not keeping communion with us, or whatever their motives be, miniſters ought to deal with God for them, and with themſelves, in ſuch a way as may be moſt proper to gain them, and exoner their conſciences, waiting if peradventure God will prevail with him, Who can tell if their making them ſenſible of their tender love and affection to their perſons, eſpecially to their ſouls, giving them all due reſpect, and doing them all the good they can, yet ſtill diſcountenancing their ſin, may in the end be bleſſed of God for their good, Jud. v. 22. 23. 2 Tim. ii. 24, 25.

Viſitation a difficult work.

§ 10. Seeing in the whole of this work, there is great need of much prudence, zeal for God, and love to ſouls, viſitation of families ſhould be carried on with dependence on God, and fervent prayer to him, both before the miniſter ſet forth to ſuch a work, and with the viſited, as there can be acceſs to, and opportunity for it.

TITLE

TITLE IX.

Of Sanctification of the Lords Day; and observing Fast and Thanksgiving Days.

§ 1. THE Sabbath is to be sanctified by an holy resting all that day, even from such worldly employments and recreations as are lawful on other days, and spending the whole time in the public and private exercises of God's worship, except so much as is to be taken up in the works of necessity and mercy, as our Shorter Catechism beareth, authorized by Assembly, Aug. 8. 1648; from which we may gather what the church understands by sanctifying or profaning of the Lord's day, and so will either approve or censure

How the Sabbath is to be sanctified.

§ 2. By the act of Assembly 1647, concerning family-worship, direct. 8. the master of the family ought to take care, that all within his charge repair to the public worship, which being finished he is to see the rest of that day spent in the private and secret exercises of piety. Care is also to be taken that the diet on that day be so ordered, that neither servants be unnecessarily detained from the public worship of God, nor any other persons hindered from sanctifying that day. Private preparation is likewise to be made for the Sabbath, by prayer and such holy exercises, as may dispose to a more comfortable communion with God in his public ordinances. See the Directory.

How to be sanctified in private families.

§ 3. When some great and notable judgements are either inflicted or imminent, or by some extraordinary provocation notoriously deserved; as also, when some special blessing is to be sought or obtained; when great duties are called for, or when sins are extraordinary for their number or nature, then it is that a church may injoin fasting: which is observed by a total abstinence, not only from all food, (unless bodily weakness do manifestly disable from holding out till the fast be ended, in which case somewhat may be taken, yet very sparingly, to support nature when ready to faint), but also from all worldly labour, discourses and thoughts, and from all bodily delights though at other times lawful, rich apparel, ornaments, and such like,

Times for fasting, and how observed.

during the fast; and much more from whatever is in its nature or use scandalous or offensive, as gadish attire, lascivious habits and gestures, and other vanities of either sex: which the composers of the Directory recommend to all ministers in their places diligently and zealously to reprove, as at other times, so especially at a fast.

Intimation of the fast. Materials for public prayer.

§ 4. The Sabbath before the fast, the causes thereof are publicly read from the pulpit, and the day of the week intimated upon which it is to be kept. The people are then to be earnestly exhorted to prepare themselves for afflicting their souls upon that day of extraordinary humiliation. So large a portion of that day, as conveniently may be, is to be spent in public reading, and preaching of the word, with singing of psalms, fit to quicken affections suitable to such a duty, but especially in prayer, to this or the like effect; giving glory to the great majesty of God, the Creator, Preserver, and Supreme Ruler of all the world, acknowledging his manifold great and tender mercies, especially to the church and nation, humbly confessing sins of all sorts, with their several aggravations, justifying God's righteous judgements, as being far less than our sins do deserve, yet humbly and earnestly imploring his mercy and grace for ourselves, the church and nation, the Queen, and all in authority, and for all others for whom we are bound to pray, (according as the present exigency requireth) with more special importunity and enlargement than at other times; applying by faith the promises and goodness of God for pardon, help, and deliverance from the evils felt, feared, or deserved; and for obtaining the blessings which we need and expect, together with a giving up of ourselves wholly, and for ever unto the Lord.

Several fasts, general and particular.

§ 5. Besides solemn and general fasts appointed by the Assemblies or their Commissions, or by civil authority, upon application from some church-judicature unto them, provincial synods, presbyteries, and kirk-sessions, may appoint fast days to be kept within their respective bounds, as Divine Providence shall administer unto them special occasions. Likewise families and particular persons may do the same, providing their fasts be not on those days on which the congregation is to meet for public worship.

§ 6. Our

§ 6. Our faſting days muſt be indicted for ſuch cauſes as are both clear and juſt, and when it will be moſt for edification; for that, as other poſitive duties, doth not always bind: therefore the church is to take heed of appointing faſts through inſinuations or ſolicitations from ſtateſmen, leſt they be branded as tools, to ſome who would faſt for ſtrife and debate, that others who differ from them about ſtate-matters may be expoſed to the odium of the people, as ill country-men. When the church ſhould be moſt cautious in appointing faſts.

§ 7. The cauſes of the faſt enumerate in the act of Aſſembly 1690, November 12. were theſe and the like. 1. Perjury; dealing treacherouſly with the Lord, and being unſtedfaſt in his covenant. 2. Unfruitfulneſs under the purity of doctrine, worſhip and government, having a form of godlineſs, but denying the power thereof. 3. Abuſe of God's great goodneſs and deliverance, evidenced by a courſe of manifeſt wickedneſs, and ſhameful debauchery, ſuch as drunkenneſs, curſing, ſwearing, adultery, and uncleanneſs of all ſorts. 4. The ſupremacy, which was advanced in ſuch a way, and to ſuch a height, as never any Chriſtian church acknowledged, and whereby the intereſt of our Lord Jeſus Chriſt was entirely ſacrificed to the lawleſs luſts and wills of men. 5. Abjured Prelacy was introduced, and the government of the church was overturned, without the church's conſent, and contrary to the ſtanding acts of our national Aſſemblies. 6. Compliance with that defection, both in miniſters and others, ſome from a principle of pride and covetouſneſs, or man-pleaſing, and others through infirmity and weakneſs, or fear of man, and want of courage and zeal for God. 7. Perſecution of the godly for non-compliance with that ſinful courſe: many faithful miniſters were caſt out, and many inſufficient and ſcandalous men thruſt in on their charges, and many families ruined becauſe they would not own them as their paſtors. 8. Decay of piety under the late Prelacy, ſo that it was enough to make a man be nick-nam'd a Phanatic, if he did not run to the ſame exceſs of riot with others. 9. Atheiſm, which diſcovered itſelf in ſome by their dreadful boldneſs againſt God, in diſputing his being, and providence, the divine authority of the ſcriptures, the life to come, and immortality of the ſoul; yea, and ſcoffed at thoſe things. 10. Impoſing and taking unlawful oaths and bonds: lawful Cauſes of a faſt in this national church.

oaths

oaths have been broken, ungodly and conscience-polluting oaths have been imposed and taken, whereby the consciences of many through the land are become so debauched, that they scruple at no oath though many have been oppressed and ruined for refusing them. 11. Neglect of the worship of God, both in public, in private families, and in secret. 12. Profanation of the Lord's day, succeeded in place of that wonted care of strict and religious sanctifying of it. 13. The shedding of innocent blood. 14. Pride and vanity, yea, Sodom's sins have abounded among us, idleness, fulness of bread, vanity of apparel, and shameful sensuality filled the land. 15. As also, great perverting of justice, by making and executing unrighteous statutes. 16. Silence of ministers in the time of such a great defection, as well as too general a fainting among professors: and as some shewed no zeal in giving seasonable and necessary testimony against the defections and evils of the time, nor keeped a due distance from them; so, on the other hand some managed their zeal with too little discretion and meekness. 17. The abominable idolatry of the Mass was set up in many places, and Popish schools erected, whereby shameful advances were made towards Popery. 18. Great ignorance of the way of salvation through the Lord Jesus Christ. Though we profess to acknowledge there can be no pardon of sins, no peace and reconciliation with God but by his blood, yet few know him, or see the necessity and excellency of him, and few esteem, desire, or receive him as he is offered in the gospel; and as few are acquainted with faith in him, and living by faith on him, so few walk as becometh the gospel, and imitate our holy Lord in humility, meekness, self denial, heavenly mindedness, zeal for God, and charity towards men. 19. Great contempt of the gospel, barrenness under it, and a deep security under our sin and danger. 20. Though the Lord, by calling us into the furnace of affliction, hath been giving us a sight of the vanity of all things beside himself, yet, to this day, there is a woeful selfishness among us, every one seeking his own things, few or none the things of Jesus Christ, the public good, or one another's welfare. 21. A bitter spirit of censoriousness, whereby the most part are more ready to carp at the sins and defections of others, than to repent

pent and mourn for their own. Theſe, and the like, were the cauſes of the faſt in the year 1690, and to them the faſts appointed ſince do ordinarily refer. See alſo how the land expreſſed the ſenſe it had of the guilt of all ranks in the ſolemn acknowledgement of public ſins, and breaches of the covenant; and a ſolemn engagement to all the duties contained therein; namely, thoſe who did in a more ſpecial way relate unto the dangers of that time. Act of the commiſſion of Aſſembly October 6. 1648. for renewing the ſolemn league and covenant, ratified by the Aſſembly thereafter.

§ 8. Albeit by the treatiſe of faſting, emitted by the Aſſembly 25th December 1565, the Sundays were appointed for ſome faſts, as being for the greater eaſe of the people; and ſince, by the laſt act of Aſſembly 1646, a faſt is appointed on the Sabbath next except one, preceding the then following General Aſſembly; yet ſeeing the work to be performed on the firſt day of the week is by divine inſtitution already determined, we ought to ſet about it exactly, which we all acknowledge to be a thankſgiving and not a faſt. Extraordinary duties are not to interfere with the ordinary, nor is one duty to ſhuffle out another. If either ſhould be allowed, it would look ſomewhat like the reverſe of redeeming the time, for thereby diligence is rather diminiſhed, than doubled in the ſervice of God. No faſt to be on the Lord's day.

§ 9 Days of thankſgiving being intimate on the preceding Sabbath, for ſome deliverance obtained, or mercy received, are wholly to be ſpent in the public and private exerciſes of divine worſhip and praiſes: the people are to rejoice with trembling, and to beware of all exceſs in eating or drinking. And demonſtrations of civil mirth, ſuch as ringing of bells, firing of guns, bonefires, and illuminating of windows, ſhould not be intermixed with the religious duties of that day: but as upon faſts, ſo upon thoſe days, there ſhould be liberal collections for the poor, that their bowels may bleſs us, and rejoice the more with us. In the 6th ſection, the church was cautioned againſt appointing faſts for ſtrife and debate, ſo I hope they ſhall be directed to avoid injoining of thankſgiving days from any falſe or unjuſt ends. Thankſgiving days how obſerved.

TITLE

TITLE X.

Of Collections and Recommendations for the Poor.

When collections for the poor are made.

§ 1. BY the act of Assembly 11th August 1648, collections for the poor, in time of divine service, (which is practised in some churches abroad) are discharged, as being a very great and unseemly disturbance thereof. And kirk-sessions are ordained to appoint some other way for receiving these collections. The method now ordinarily taken is this: the elders or deacons do collect at the church-door from the people as they enter in, or else from them when within the church, immediately before pronouncing the blessing, and after divine service is ended.

Extraordinary collections.

§ 2. Beside these ordinary collections for the poor, there are frequently extraordinary collections made for charitable and pious uses; particularly, by session 10. Assembly 1704, there is an act for a voluntary contribution, by way of subscription, in each presbytery, for gathering from noblemen, gentlemen, and other charitably disposed people, for erecting English schools, and educating youth in the Highlands and Isles.

Recommendations are for a definite time.

§ 3. For preventing unnecessary begging, or imposing upon charitable people, no church-judicature is to give recommendations for charity to any without their own bounds; and these recommendations are to be only for a definite time. Assembly 1695, sess. 17.

TITLE XI.

Of Provision for Schools and Universities.

How salaries for schoolmasters are established.

§ 1. BY King William's parl. sess. 6. cap. 26. it is appointed that there be a schoolmaster and school in every parish, his fee not under one hundred merks, nor above two, to be paid by the heritors and liferenters of the parish, who are to have relief for the half of it off their tenants; and that letters of horning be therefor directed at the instance of the schoolmaster, conform to the proportions due by the heritors, laid on by the major part of them; (I suppose, convened by public intimation from the minister in the pulpit, by order or advice of the session)

ſion) or, failing of whom, by any five commiſſioners of ſupply within the ſhire, upon the preſbytery's application to them; and the heritors for the ſalary are to be ſtinted conform to their valued rent. Item, Proviſion for ſchools and ſchoolmaſters are declared to be a pious uſe, to which patrons may employ vacant ſtipends, at the ſight of the ſheriff of the bounds. Excepting from this act the ſtipends vacant in the ſynod of Argyle, becauſe of the act, parl. William and Mary, ſeſſ. 2. cap. 24. in their favours. And by the 10th act, Aſſembly 1699, it is recommended to the ſeveral preſbyteries, to uſe their endeavours, that ſchools be erected in every pariſh, conform to the acts of parliament, and acts of Aſſembly, and it is recommended to ſynods to ſee this obſerved.

School-revenues privileged.

§ 2. By the foreſaid 26th act, and likewiſe by the 14th act of the ſame ſeſſion of parliament, the privileges granted to miniſters for their ſtipends, viz. That there be no ſuſpenſion, except on conſignation, are extended to univerſities, ſchools, and hoſpitals, for the ingathering of their rents and debts. See more of this on the title of mortifications and miniſters ſtipends.

The maintenance for ſchool-maſters and precentors to continue, though they read not.

§ 3. When the Directory was eſtabliſhed, by which public reading of the ſcriptures was committed to the preachers; and fearing leſt the maintenance on that pretence might be withdrawn from the readers, the Aſſembly did, Auguſt 6. 1049, require the preſbyteries, to ſee that none of the maintenance given to ſuch readers, precentors, and ſchoolmaſters, be taken from them, notwithſtanding that recommended alteration in the Directory.

How far univerſities may ſet tacks of their teinds.

§ 4. A tack or leaſe of teinds, ſet by an univerſity for a definite time, with an obligement to renew the ſame in all time thereafter, was found not effectual after the definite time was expired; though the ſame rent was received for ſome years after, that was not ſuſtained as an homologation, but as a tacit relocation. See Stair's Inſtit. p. 301. ſo that after the definite time is expired, they might increaſe the tack-duty.

Extraordinary ſupply for univerſities and ſchools.

§ 5. So careful have our ſovereigns and parliaments been for the flouriſhing of theſe ſeminaries of church and ſtate, that for their proviſion and bettering of their ſtocks, they have ſometimes, upon the offer made by the clergy, ordained forty pounds, or 6 *per cent.* out of every thouſand merks

merks of miniſters rents, to be paid yearly for five years, Car. II. par. 1. ſeſſ. 3. cap. 21. and at other times vacant ſtipends are aſſigned for their better proviſion for a time, Car. II. parl. 2. ſeſſ. 3. cap. 20. Ja. VII. parl. 1. cap. 18. They have likewiſe impoſed a ceſs upon the kingdom for preſerving of ſome univerſities, Car. II. par. 3. cap. 23. Now the univerſities, by gift under the great ſeal, do ſhare liberally of the biſhops rents, and ſome of them have lucrative and eaſy tacks of certain biſhopricks, and large allowances too, even out of theſe tack-duties, ſometimes for ſalaries to new profeſſions.

TITLE XII.

Of the Immunity and Union of Churches.

Local ptiviledges within church-walls and yards what, and how far extended.

§ 1. BY the canon law, there are certain immunities or privileges granted within church-walls and church yards, called local, ſo as that ſecular judges within that bounds can cognoſce upon no civil or criminal action: alſo, that no incorporations, councils, or fairs, meet or hold there: that there be no univerſity diſcourſes there: that ſecular affairs be not the ſubject of any converſation there: moreover, that there be no feaſtings there, and that theſe bounds be ſanctuaries to the guilty flying there for refuge, and they are not to be pulled thence to puniſhment, unleſs the attrocity of the crime be ſuch as may induce the church to ſurrender them. This privilege is alſo extended to the houſes and palaces of biſhops. The temple of Jeruſalem was built by God's direction, it was dedicated by man, and God's acceptation of it was teſtified. It appears by John ii. 19. that it was an illuſtrious type of Chriſt's body, and by the 16th ver. we find that our Lord reſented the profanation of that holy place. Yet, notwithſtanding of all that, God doth ſo abhor proud and malicious ſinners, that he commands them to be taken from his altar that they may die, Ex. xxi. 14. and Joab was ſlain in the tabernacle of the Lord, 1 Kings ii. 31. But that ſpecial kind of reſpect which was due to that hallowed and typical temple, is not communicate, extended, or confined to the places of worſhip under the New Teſtament, John iv. 21.

§ 2. Like-

§ 2. Likewiſe by the canon law, there is another immunity or privilege, called perſonal, granted to the clergy, ſuch as, that they are excuſed from accepting to be tutors or curators, and that none in ſacred orders ſhall be liable to the payment of public burdens. I acknowledge, miniſters ought not to be ſo impoſed upon as to be perplexed with ſecular affairs, and far leſs ſhould they ever do it of choice: And albeit the vocation of a paſtor, his commiſſion and inſtructions relating thereto, be all of a ſpiritual nature, and of divine original, yet their perſons, eſtates, and behaviour, conſidered in a civil capacity, are, according to ſcripture and reaſon, ſubject to the civil government. Their perſons are accounted ſo ſacred among our people, and they judge themſelves ſo ſecure from that venerable impreſſion, they very well know, is generally received of their character, that they rarely make ordinary journies with arms, as gentlemen and other travellers do. They are by law ſtill exeemed from attending the king's hoſt, except the nation become ſo miſerable, that neceſſity or their own ſecurity oblige them: And even in that extraordinary caſe, they may, if they pleaſe, only act in the army as miniſters or chaplains. Since the year 1689, both poll and hearth money have been impoſed upon miniſters by authority of parliament.

Perſonal immunity, how far allowed to miniſters.

§ 3. By the canon law on this title, two churches may be made one, when the maintenance is ſo inconſiderable, that two paſtors can have no comfortable living upon them, or when one of them is become deſolate by the ſword of an enemy, or the number of pariſhioners ſmall or very much diminiſhed. In which caſe it would be for the greater good of the church, if two ſuch ſmall charges were reduced into one, providing the benefice of the ſmall charge, now united, be not condemned to any ſecular or other uſe, but only applied to maintain a paſtor in a new erection, or elſe a collegue in ſome numerous congregation; for two competent ſtipends are not to be united, till there be no need for any new erection or augmentation in the church.

When churches and ſtipends are to be united.

§ 4. If the heritors and elders of two kirk-ſeſſions ſhall agree to the uniting of ſome parts or ſkirts of one of the pariſhes to another, or to tranſplant the church from one part of the ſame pariſh to another part therein, for the peoples greater eaſe and convenience, in that caſe, the preſbytery,

When preſbyteries may authoriſe partial union, or tranſplantation of churches.

ry, upon application of the parties concerned, may, for any of these ends, interpose their authority to their agreement, providing they find it may tend to the greater ease and edification of the people; and providing there be still two distinct parishes, and the quantity and quality of both stipends preserved undiminished and unaltered. What I here propose is conform to the 5th art. cap. 7. of the French church discipline, in these words: "The colloquies and "synods shall deliberate of limiting the extent of places "wherein each minister shall exercise his ministry."

TITLE XIII.

Of Churches, Church-dikes, Manses, Yards, Glebes, Bells, Utensils, Ornaments, Books, and High-roads to Churches.

What a church is, and by whom to be repaired.

§ 1. CHURCHES are public houses erected for public divine worship, and for hearing the preaching of the word of God; they are to be repaired out of the vacant stipend; for that 18th act, Jam. VII. par. 1. is never yet in so far rescinded: and when the vacant stipends fail, the burden of building and repairing the church doth lie upon the heritors, whether residing in the parish or not. The majority of these that meet, must stent themselves for that effect, according to their rents But if the heritors refuse, being required thereto by the minister from the kirk-session, the Lords of session, by a bill given in by the minister, will grant warrant to him and his session to convene at a certain day, for trying what sum will repair the church, and to stent the heritors in that sum conform to their valued rents, and to appoint a collector to uplift the same. But before the making up of that stent-roll, the heritors ought again to be publicly advertised to meet, and then to make the same. If, after this order is used, they fail, the session then concludes the stent, and letters will be directed at their collector's instance, against the heritors for paying the proportions they are stented in Stair's Instit. p. 192. and act ult. par. 3. Jam. VI.

Kirk-yards, and yard-dikes.

§ 2. Church-yards are dormitories for human bodies, and ordinarily that spot of ground within which the church stands. Our law allows to church-yards equal privileges with

with churches, in many things; particularly, that the raising of tumults or frays in time of divine service in churches, or church-yards, is punished with loss of moveables, act 27. par. 11. Jam. VI. The church-yard is fenced with dikes, partly for ornament, and partly as a preservative to the dead bodies from being digged up or torn by beasts. The only right that ministers have to the grass growing in the church-yards, is, that they may cause their servants cut it, and hinder others from doing so; the heritors are obliged to repair the church-yard dikes with stone and morter, two ells high, with sufficient stiles and entries; and the Lords of session are obliged to direct letters of horning against them for that effect, cap. 232. par. 15. Jam. VI.

Who are liable to build and repair manses.

§ 3. The minister, at the sight of the presbytery, or such of their number as they shall appoint, with two or three discreet men of the parish, may build or repair his own manse upon the expences of the heritors and liferenters, who are respectively liable to reimburse him of what he truely and profitably hath bestowed that way, unless they offered to contribute their own materials, and he refused them: See Mackenzie's observations on the 48 act, par. 3. Jam. VI. Where there is a competent manse already, the heritors must repair it once sufficiently at the ministers entry, who is thereafter to uphold the same during his incumbency, and they out of the vacant stipend, in time of the vacancy. act 21. par. 1. sess 3, Car II. As the minister is obliged to leave the manse in as good condition as he entred to it, so before he can be made liable so to do, the heritors ought to move the presbytery to pass an act in their favours, to declare it a free manse; but before they can pass any such act, a committee of their number must visit it, after it is built or repaired, and find, upon the depositions of four discreet workmen, who understand that work, but have not been employed therein, two whereof to be chosen by the heritors, and other two by the minister, that the building or reparation is sufficiently finished. And if there be any materials left, or money remaining not expended, after that is declared, the superplus belongs to the heritors. If the minister be not able or willing to advance that money, which has been declared to be necessary for materials and workman-ship, or if heritors refuse to

meet and ſtent themſelves for that effect, then what ſhould hinder the miniſter to take the ſame courſe, and obtain the ſame redreſs that is granted againſt refuſers to build or repair churches, as in § 1. & 2

How much expence and ground for manſe, yard, and glebe.

§ 4. It is uſual to allow half an acre of ground for manſe and yard. The manſe is not to exceed 1000 pounds, nor to be under 500 merks of value. Miniſters hold their manſes and glebes of none but the King. Glebes are to conſiſt of four acres of arable ground; failing of which, ſixteen ſoums graſs of the beſt and moſt commodious paſturage of any kirklands within the pariſh, Jam VI. par 18. cap 7. and by the 21 act par. 1. ſeſſ. 3. Car. II miniſters (excepting miniſters of burghs royal where there is no landward pariſh, and who have no right to glebes) are to have graſs for one horſe and two kine, or elſe, that the heritors pay to the miniſter twenty pounds yearly.

Deſignation of ground for manſes and glebes.

§ 5 Manſes and glebes, where they have not been deſigned, or not the full quantity, are now deſigned by the preſbytery, or their committee, with two or three diſcreet men of the pariſh. The miniſter, or a procurator in his name, receives infeaftment therein from the moderator, upon which he takes inſtruments in the hands of a notary, or of the clerk of the presbytery. And upon a petition given in by the miniſter to the Lords of ſeſſion, with the act of deſignation and inſtrument, they will interpoſe their authority for removing the heritors and poſſeſſors of the lands deſigned, in terms of the 48. act, par. 3. Jam. VI. by granting letters of horning, to charge them to remove within ten days. And glebes are deſigned with freedom of foggage, feuel, feal, divot, loaning, free iſh and entry, and other privileges, according to uſe and wont. Jam. VI. par. 13. cap 161.

How the heritor of the lands deſigned obtains relief.

§ 6. The proprietors of the lands deſigned muſt get relief pro rata, off the reſt of the heritors of kirk-lands, within the pariſh, if the deſignation was out of kirk-lands, and they not being the glebes and manſes of old pertaining to perſons or vicars; for there is no relief competent to the feuers or tackſmen of ſuch lands, except only againſt ſuch as have feus of other parts of the ſaid old glebe or manſe, act 199. par. 18. Jam. VI. When the deſignation is out of temporal lands, the reſt of the heritors of the like lands are to contribute proportionally for relief thereof.

§ 7. It

§ 7. It would look more impartial like, and reſemble more that humility, love, and ſimplicity recommended to Chriſtians by the apoſtle (Jam. ii. 1.) and would look liker the ſubjects of Chriſt's kingdom, which is not of this world, if church members would take their ſeats in the church without reſpect of their civil character, as they do at the Lord's table. Some ſeats are built and repaired at the general charge of the pariſh, in which all have a common intereſt; and there are others, which particular heritors have built for their own uſe, with conſent of the kirk-ſeſſion, or which they have preſcribed a right unto by forty years poſſeſſion. In ſeveral burghs royal within this kingdom, the diſpoſal of all the church ſeats, at leaſt upon the bounds at firſt allotted to them for their inhabitants by the kirk-ſeſſion, is thereafter ordered and parceled out by the town council, and burdened with certain yearly ſums for a miniſter's ſtipend, and where the ſeats are diſpoſed upon to burgeſſes without that burden; and it be found that without it there cannot be a competent ſtipend to the miniſters. The diſpoſitions and rights ſo made, may, no doubt, be reduced on that head; for it was never the intention of the kirk-ſeſſion, who gave theſe rights, to authoriſe an abſolute alienation of ſeats, to the obſtructing and preventing funds, for maintaining the public preaching of God's word.

Seats common and particular, how acquired, and how burdened.

§ 8. The keys of ſeats are to be kept by beddals, that when the proprietors are abſent, ſuch as want ſeats, or throng the ſeats of others, may be accommodated for the time; but in caſe the owners be ſo little concerned with religion, as not to countenance the public worſhip of God, or averſe to ſerve ſuch as attend upon it with their empty ſeats, the people that want accommodation cannot be blamed to poſſeſs and occupy that void in their abſence; and if the owners, or others by their order, ſhall offer to diſpoſſeſs them violently, eſpecially in time of divine ſervice, they ſhould be proſecuted as diſturbers of public worſhip, both before the civil magiſtrate and church judicatures.

Beddals ſhould keep the keys of ſeats, and why.

§ 9. The heritors are bound to pay for, and are ſtated in the property of the bells, books, utenſils, and ornaments of the church; but the miniſter and kirk-ſeſſion, to whoſe cuſtody they are committed, may purſue for any of them that are abſtracted. A charge for a ſtent impoſed

Who are the proprietors of bells, books, &c.

fed for buying of bells to a church within a burgh royal, hath been ſuſtained againſt the landward heritors, albeit the burgeſſes and indwellers would have more advantage by them. See the new treatiſe on church lands, p. 212.

Kirk-roads.

§ 10. Every one muſt have ſome way to the church, but cannot pretend to any ſpecial way, as the neareſt, through another man's land, without proving immemorial poſſeſſion, which is reckoned forty years, of ſuch a gate or paſſage; and to make up this immemorial poſſeſſion, a perſon will be allowed to conjoin his predeceſſors poſſeſſion of that road with his own. See the forecited book, p. 212.

TITLE XIV.

Of Tithes, Stipends, and Mortifications.

What is meant by ſtipend, benefice, and the church's patrimony.

§ 1. THE maintenance belonging to miniſters for their labours we call ſtipends; but more commonly, and by the canon law, they are named benefices. Calvin, in his Lexicon Juridicum, tells us, that the rewards and privileges given and granted of old to ſoldiers for their ſervice, were called benefices and ſtipends. The canoniſts define a ſtipend or benefice thus: "Eſt jus perpetuum percipiendi fructus ex bonis eccleſiaſticis, propter aliquod officium ſpirituale, auctoritate eccleſiæ conſtitutum." Whatever belongs to church-men is likewiſe called the patrimony of the church, the word ſignifying an inheritance left by a father; becauſe, when legiſlators or private perſons do authoriſe or deſtinate ſuitable encouragement for the comfortable life of church-guides and paſtors, they do, in ſo far, act the part of nurſing fathers unto the church. In the 9th chapter of the Policy of the Kirk, they comprehend, under the churches patrimony, all things given, or to be given to the kirk, and ſervice of God, as lands, buildings, poſſeſſions, annualrents, and all ſuch like wherewith the kirk is doted, either by donations, mortifications, or any other lawful titles, together with the continual oblations of the faithful; as alſo teinds, manſes, glebes, and ſuch like; which, by the common and municipal laws, and univerſal cuſtoms, are poſſeſſed by the kirk. And to take any of this patrimony,

mony, and convert it to the particular and private use of any person, is reputed a detestable sacrilege before God by our church.

That stipends are due, and how much is competent.

§ 2. The work of the ministry is a warfare, and it is not ordinary for soldiers to maintain themselves without pay, 1 Cor. ix 7. and the light of nature teacheth, that the labourer is worthy of his hire. By the 42d article of cap. 1. French church-discipline, it is found, that ministers who are rich, and have of their own, should, nevertheless, take wages of their flocks, lest their example do prejudice to other pastors and churches. And Mackenzie and Stair, in their Institutions, do maintain, that some part of our goods is due, by divine right, towards the maintenance of the clergy; but that the proportion may be determined by human laws, according to circumstances. By the 19th act of parliament 1633, all ministers are appointed to be provided with sufficient stipends, being eight chalders of victual, or eight hundred merks at least beside manse and glebe, except in singular cases referred to the commission for plantation of kirks. In some places of Scotland, ministers may maintain their families for less than the half, which must be allowed to maintain the same families in other parts of the kingdom. Seeing ministers do deny themselves to the gain of civil employments, whereby they might have a more unlimited prospect, not only of maintaining their families, but of purchasing stocks for their posterity, therefore the Dutch custom is not unreasonable, which alloweth to ministers so much for every son, in order to his better education and breeding.

Tithes the fund for stipends.

§ 3. The canon law defines tithes thus: "Est quota "honorum mobilium, licite quæsitorum, pro sacerdotibus "Dei, ipsius locum in terris tenentibus, tam divina quam "humana constitutione debita." Ministers stipends, and augmentations thereof, are legal burdens, and the main one to which teinds are liable; against which no title or right whatsoever can secure: and the truth is, till once the parish minister is sufficiently provided, no person can safely buy his own teinds; for they are always subject to be evicted for that end, by the common law and our custom, even after the heritor has bought him. See that new treatise on tithes, p. 340. By William and Mary's parl. sess.

4.

4. cap. 24. it is appointed, that teinds belonging to their Majeſties, by the aboliſhing of Prelacy, ſo long as they remain undiſponed, as likewiſe teinds belonging to colleges and hoſpitals, or deſtined to pious uſes, are not to be ſold, but may only be valued, and made liable thereafter for payment of the valued duties.

Some tithes cannot be ſold, but only valued.

§ 4. Former parliaments referred to their commiſſions the plantation of kirks and valuation of teinds; but now, the laſt ſeſſion of the laſt parliament, have, in place of all further commiſſions for ſuch matters, impowered and appointed the Lords of ſeſſion to judge in all affairs and cauſes, which by former laws did pertain to the cognizance and juriſdiction of commiſſions of parliament: only they are reſtricted from tranſporting of a kirk without conſent of moſt of the heritors of the pariſh. Every Wedneſday afternoon in time of ſeſſion, the Lords meet to call and diſcuſs ſuch cauſes.

Plantation of kirks remitted to the Lords of Seſſion.

§ 5. By the 4th act, parl. 22. Jam. VI. biſhops are diſcharged to ſet in tack longer than nineteen years, and inferior beneficed perſons for longer ſpace than their own lifetime, and five years thereafter (except the commiſſion authoriſe it) under the pain of deprivation; and further, the contraveners declared infamous, and incapable of any church office. Longer tacks were ordained to be regiſtrate within forty days, in a particular book to be kept by the clerk-regiſter for that effect, otherwiſe to be null. And where it is ſaid, that the inferior clergy can ſet tacks to run five years after their deceaſe, that is always to be underſtood with conſent of the patron, obtained either before or after the ſetting of the tacks: for without that they can ſet but three years tacks, act 15. par. 23. Jam. VI. and that the eccleſiaſtical rents may ſuffice to their uſes, all alienations, ſetting of feus, or tacks of the rents of the kirk, as well lands as teinds, in hurt and diminution of the old rentals, ought to be reduced and annulled. And likewiſe, that in all times coming, the teinds be ſet to none but to the labourers of the ground, or elſe not ſet at all. See cap. 12. of the Policy of the Kirk.

How long church-men may ſet tacks.

§ 6. The legal terms of paying or vaiking of benefices and ſtipends are Whitſunday, at which time the fruits are held to be fully ſown, and Michaelmaſs, when they are preſumed to be fully ſeparated. If the incumbent's entry be

The term of payment and vaiking of ſtipends.

be after Michaelmas, and before Whitſunday, he hath that whole year; if after Whitſunday, the half of that year: or if he die, be depoſed, or tranſported before Whitſunday, he hath no part of that year; if after Whitſunday, and before Michaelmas, he hath the half of that year.

§ 7. Although a benefice be vaik when a miniſter is depoſed, yet till the ſame be intimate, the pariſhioners may pay their ſtipends in to him, and his diſcharges will defend them. But after intimation is made, no payment will be ſuſtained. See Stair's Inſt. p. 151. Benefices vaik upon intimation of the ſentences.

§ 8. The annat due to the executors of deceaſed miniſters, is declared to be half a year's rent, over what is due to the defunct for his incumbency, to wit, if he ſurvive Whitſunday, the half of that year is due for his incumbency, and the other half for the annat: and if he ſurvive Michaelmas, the whole year is due for his incumbency, and the half of the next year for the annat, and the executors need not to confirm it, parl. 2. ſeſſ. 3. cap. 13. Car. II. neither can it be diſponed to ſtrangers by the defunct, nor affected by his creditors, for it did never belong unto him, it being only a gratuity which the law indulgeth, upon the account that miniſters are ſuppoſed not to die rich The annat divides betwixt the relict and the neareſt of kin, if there be no children, and is extended to the profit of the glebe, if there be no new intrant: But where there is an intrant, the glebe belongs to him, and is no part of the annat, nor did belong to the former miniſter, unleſs it was ſown by him, and the crop upon it at the entry of the intrant. See Stair's Inſt. p. 306. Annat, what it is, and to whom it falls.

§ 9. General letters of horning (ſo called, becauſe they do not expreſs *nominatim* the perſons to be charged) are allowed upon decreets of locality, act 13. ſeſſ. 2. parl. Will. and Mary; and theſe letters are effectual, not only againſt the perſons decerned in the decreets, but alſo againſt their heirs and ſingular ſucceſſors poſſeſſing the lands affected with the locality. But ſummar horning was not ſuſtained at the inſtance of a miniſter's executor for his ſtipend. Miniſters poinding for their ſtipends need not to carry the goods to the market-croſs of the head-burgh of the proper juriſdiction, but may compriſe them on the ground where they are, by honeſt ſworn men, act 21. ſeſſ. 3. parl. 1. Car. II. No ſuſpenſions of ſpecial decreets for miniſters ſtipends can paſs, except upon production of diſ- The privileges of proceſſes for ſtipends.

charges, or upon consignation of the sums charged for; and if victual be the subject of the charge, one hundred merks must be consigned for each chalder, and proportionally where less than a chalder is charged, without prejudice to the Lords of session to modify more or less at the discussing. act 6. sess. 1. parl. 2. Car. II. Actions for ministers stipends commenced in inferior courts cannot be advocated. Suspensions of and actions for them before the session are discussed summarily, without abiding the course of the roll; and suspenders, against whom letters are found orderly proceeded, should be decerned in a fifth part more at least than the sums charged for, to pay the minister's expences and damage, act 27. sess. 5. of K. William's parl.

Who dispose on vacant local stipends; and for what uses.

§ 10. Although the power of presenting ministers by patrons to vacant churches be discharged, yet that is but prejudice to them of their right to employ the vacant stipends on pious uses within the respective parishes, except where the patron is popish; in which case he is to employ the same on pious uses, by the advice, and at appointment of the presbytery; and in case the patron shall fail in applying the vacant stipends for the uses foresaid, that he shall lose his right of administration of the vacant stipend for that and the next vacancy, and the same shall be disposed upon by the presbytery to the uses foresaid. Excepting always the vacant stipends within the bounds of the synod of Argyle; which synod is impowered to dispose thereof for training up of youth at schools and colleges, and for other pious uses, with consent of the heritors, Will. and Mary's parl. sess. 2. acts 23. 24

Stipends quoad modum probandi, prescribe in five years.

§ 11. Ministers stipends prescribe, *quoad modum probandi*, if not pursued within five years after the same are due; so that after that time they cannot be proven to be resting unpaid, except by the defenders their oaths, or by a special writ under their hands, acknowledging what is resting.

How bygone victual bolls are liquidate.

§ 12. A minister having charged for the payment of the bolls contained in his decreet of locality, the debtor was ordained by the Lords to depone upon the prices he got; although he had offered the fiars by way of instrument within seven days after the charge, and produced receipts of the charger and his predecessors, for instructing that they were not in use to uplift the bolls *in ipsis corporibus*. It seems as unreasonable to oblige a minister to accept the fiars from the heritors, as it were to oblige the heritors to

accept

accept the fiars from their tenants. Yet I think the liquid price of vacant ſtipends, according to cuſtom, is the fiar of the reſpective ſhires: ſee that forecited treatiſe on tithes, pag. 427.

§ 13. The bolls contained in a miniſter's decreet, if no meaſure be therein ſpecified, ſhould be paid according to the Linlithgow meaſure: unleſs the miniſter hath been thirteen years in poſſeſſion of uplifting according to another meaſure, or the modified ſtipend would fall ſhort of the quantity in the act of parliament by Linlithgow meaſure; for in that caſe the miniſter ought to be paid conform to the meaſure of the ſhire in which the pariſh lies; ſee that treatiſe on church-lands, p. 428. According to what meaſure ſtipends are to be paid.

§ 14. An eccleſiaſtical penſion is a certain portion of yearly rent payable for a time out of another's benefice. Eccleſiaſtical penſions ſeem to have been introduced at firſt, as a mean of ſubſiſtance to incumbents, who, through ſickneſs or infirmity of old age, were turned unable to officiate: for ſuch were allowed to reſign their benefices, reſerving to themſelves penſions out of them, as they might live upon, ſuitable to their former character. As church-men turned afterwards more degenerate, and benefices became merchandiſe, reſignations and penſions upon trivial reaſons were ſuſtained; ſee book foreſaid, page 160. Eccleſiaſtical penſions, what.

§ 15. The paſtoral charge, or the office of profeſſor of theology in ſchools, is of that weight and conſequence, that to diſcharge any one of them ſatisfyingly, will be exerciſe enough to any honeſt man, however ſufficient, all the days of his life. By the canons of the ſynod of London, October 25. 1597, in Biſhop Sparrow's collections, the extraordinary parts and merits of ſome is pretended for a ground to diſpenſe with a plurality. This were relevant to be practiſed for ſome time in eccleſia conſtituenda, where gifted men are rare: but to continue that cuſtom in eccleſia conſtituta, where gifts do abound, it were to neglect both the maintenance, and likewiſe the gifts of God that he hath beſtowed on ſome, and to overvalue the gifts he hath given to others, and hinder them from diſcharging of the duties belonging to one office eminently. There were in Chriſt's time abundance of idle Phariſees, Scribes, and prieſts, that ſpent their time in teaching Plurality of benefices not to be tolerated in a conſtitute church and why.

teaching the people their rites, ceremonies and traditions: but there were always but a few labourers in God's harveſt; hence Chryſoſtome thought that but few miniſters will be ſaved. What man or angel is ſufficient for the miniſterial work! But their ſufficiency is of God.

Mortifications under the preſbyteries inſpection.

§ 16. By the 22d act, Aſſembly 1700, preſbyteries are to take notice, how ſums of money mortified, or otherwiſe belonging to the poor of the pariſh, have been managed and applied from time no time, and if they ſhall find dilapidations of any ſuch ſums, that thoſe guilty thereof be purſued according to law, and the ſynods are to ſee to the preſbyteries diligence herein.

Pious donations muſt be applied as they were deſtinate by the diſponer.

§ 17. By cap. 6 parl. 1. Car. I. gifts, legacies, or donations for pious uſes, muſt not be inverted from the ſpecific uſe deſtinate by the diſponer, and the perſons intruſted are made countable for the ſame, and ordinary profits thereof to the kirks, colleges, and others to whom they are diſponed; and this is extended to all ſuch diſpoſitions as have been made ſince the majority of King James VI. and that letters be thereon direct.

Mortifications ought not to be accepted in prejudice of blood relations.

§ 18. That forecited book on church-lands, p 107. tells us, that Charles the Great diſcharged eccleſiaſtics to accept of mortifications, whereby children would in effect be diſinherited So good Auguſtine refuſed univerſal legacies in favours of his church, when the teſtator left children or parents who might be prejudged and ſuffer thereby. Nor was this generoſity of his ſingular, for a certain man having no children, nor hopes of any, having gifted his eſtate to the church of Carthage, only with the reſervation of his own liferent, Aurelius the biſhop reponed him to his former right, upon the unexpected birth of a ſon.

The rectifying of popiſh mortifications commendable, but not their miſapplication, or extinction.

§ 19. By the 29th act, parl. 11. Jam. VI. popiſh benefices are annexed to the crown, or converted into civil uſes. Conſider that theſe mortifications were fraudulently elicited from perſons, impoſed upon by ways and means of prieſt-craft; and that they had been originally deſtinate to maintain an idolatrous and ſuperſtitious worſhip. Now, it being the public intereſt that none make a wrong, far leſs a ſinful uſe of their property, it is incumbent on the orthodox magiſtrate, to convert what was mortified and fraudulently obtained for maintenance of idolatry, to the maintenance

maintenance of the true worſhip of God: and in caſe there ſhall happen any excreſcence, over and above what may ſupport the ſame, and the miniſters thereof comfortably, then may not that be applied for ſome honeſt and neceſſary uſe in the republic, until the affairs of the church require the ſame again. This is confirmed by the Policy of the kirk, cap. 12. art. 14.

§ 20. The viſitors of hoſpitals are to be appointed by the ſovereigns, act 101. parl. 7. Jam. V. and accordingly by Will. parl. ſeſſ. 6. cap. 29, there is a recommendation to his majeſty to cauſe viſit hoſpitals, and inquire after mortifications. This is renewed ſeſſ 9. cap. 21. It would ſeem by the 27th act, parl. 2. Jam. I. that actions for bringing patrons and others to count for their intromiſſions with the rents of hoſpitals, may be intented at the Chancellor's inſtance, eſpecially in caſe no royal viſitation be appointed. Viſitors of hoſpitals and mortifications to be named by the ſovereign.

§ 21. In the 9th and 12th chapters of the heads of Policy of the kirk, they allow of a fourfold diſtribution of the churches partimony; one portion thereof to be aſſigned to the paſtor for his entertainment and hoſpitality: another to the deacons, elders, and other officers of the kirk and kirk-ſervants, ſuch as clerks of Aſſemblies, takers up of pſalms, beddals, and keepers of the kirk, joining with them alſo the doctors, and ſchools, to help their old rents where need requires; the third portion to be beſtowed on the poor members of the faithful, and on hoſpitals: the fourth for reparation of kirks, and other extraordinary charges as are profitable for the kirk, and alſo for the commonwealth if need require. A fourfold diſtribution of the patrimony of the kirk.

§ 22. In the 12th chapter of that book of diſcipline, the collection and diſtribution of all eccleſiaſtical goods or patrimony, properly belongs to the office of the deacons, (ſee the title of deacons) that the poor may be anſwered of their portion thereof, and they of the miniſtry live without care and ſolicitude, as alſo the reſt of the treaſure of the kirk may be reſerved and beſtowed to their right uſes. If theſe deacons be elected with ſuch qualifications as God's word requires, there is no fear that they will abuſe their office. Yet, becauſe the giving ſo great truſt to them, appeareth to many to be dangerous, let them be obliged to find caution for their fidelity, that the kirk rents be no way dilapidated. Patrimony of the church collected by deacons, and why they are to find caution.

BOOK

BOOK III.

TITLE I.

Of Apoſtacy, and atheiſtical Opinions of Deiſts.

What an apoſtate is.

§ 1. APOSTATES are theſe who altogether deſert the Chriſtian Faith: Yet ſometimes they are taken for ſuch as deſert that holy faith to which they are engaged at baptiſm, and become profeſſors of a falſe religion. All heretics are not apoſtates.

The atheiſtical opinions of Deiſts.

§ 2. By the 21ſt act of Aſſembly 1696, all miniſters are enjoined, where there is any apparent hazard of contagion from ſuch perſons as are of atheiſtical opinions, to detect the abominableneſs of their tenets; ſuch as, the denying of all revealed religion, and the grand myſteries of the goſpel, viz. The doctrine of the Trinity, the incarnation of the Son of God, his ſatisfaction to divine juſtice, juſtification by his imputed righteouſneſs to them who believe in his name, the reſurrection of the dead; and, in a word, the certainty and authority of all ſcripture revelation; as alſo, their aſſerting, that there muſt be a mathematical demonſtration for each purpoſe, before we can be obliged to aſſent thereunto, and that natural light is ſufficient to ſalvation.

The puniſhments of ſuch Deiſts.

§ 3. By the 11th act of King William, parl. 1695, it is ordained, that whoever ſhall, in their writing or diſcourſe, deny, impugn, or quarrel, argue, or reaſon, againſt the being of God, or any of the perſons of the bleſſed Trinity, or the authority of the holy ſcriptures, or the providence of God in the government of the world, ſhall, for the firſt fault, be puniſhed with impriſonment, ay and while they find bail to give public ſatisfaction in ſackcloth to the congregation within which the ſcandal was committed; and, for the ſecond fault, the delinquent ſhall be fined in one year's valued rent, and the twentieth part of his free perſonal eſtate, beſides his being impriſoned, ay and while he give ſatisfaction again ut ſupra; and for the third fault, he ſhall

ſhall be puniſhed with death as an obſtinate blaſphemer. See title of Blaſphemy: Accordingly one Aikenhead was hanged for that crime betwixt Leith and Edinburgh, about the year 1697. All judges and miniſters of the law are injoined to execute this act for the firſt fault, and all inferior magiſtrates of ſhires, regalities, ſtewartries, and their deputies, and magiſtrates of burghs, are to execute this act as to the ſecond fault; and, as to the third fault, the execution thereof is remitted to the Lords of juſticiary.

TITLE II.

Of Papiſts, Quakers, and Bourignianiſts.

§ 1. ACcording to the canon law, "Hæretici ſunt illi "qui vanæ gloriæ principatuſque ſui cauſa, fal- "ſas opiniones gignunt vel ſequuntur." Anciently the word Hæreſis was taken for a firm opinion, whether the ſame was good or bad. It is committed by Chriſtians when they pertinaciouſly propagate or follow opinions contrary to the received fundamental doctrine of the church. Heretics who they are.

§ 2. That no man ſhould be compelled by temporal puniſhments to profeſs the true faith, is a doctrine univerſally received among the reformed churches. It is crimen mere eccleſiaſticum, at leaſt as to its cognition prima inſtantia. The reformed churches never deliver any they find heretics to the civil judge, or rather, according to the employment given the judges by Papiſts, the civil executioners. One continuing a heretic ought to be rejected and excommunicated, compare Titus iii. 10. with 1 Tim. i 20. Our ſovereigns, by their coronation oath, are to root out all heretics that ſhall be convicted by the true kirk of God, from their empire of Scotland, which doth not oblige them to perſecution, nor to pay blind obedience to the church, but only it binds them, at leaſt chiefly, to execute the laws againſt Papiſts, who are declared common enemies to all Proteſtant ſtates, Jam. VI. parl. 16. cap. 18. Puniſhment of hereſy.

§ 3. The ſeverity of our laws againſt Papiſts will be further juſtified, if we conſider, that by the law of God idolators were to be put to death, Deut xvii. and agreeable thereto, popiſh idolaters are to be puniſhed with death, by the 104th act, parl. 7. Jam. VI. By Jam. VI. parl. 6. cap. Act of parliament againſt Papiſts.

cap. 71. persons going out of the country for further knowledge of letters, are to have the King's licence, which shall contain this provision, that they shall adhere to the true religion, and do nothing against it, under the pain of barretry, (which with us is committed by those who go to Rome to buy benefices, and is punishable by infamy and banishment, Jam. VI. parl. 1. cap. 2.); and that within twenty days after their return, they make and give before their ordinary, the confession of their faith as now established, or otherways devoid the kingdom within forty days thereafter, or be pursued as adversaries to the religion. By James VI. parl 7. cap. 104, none are to go on pilgrimage to kirks, chapels, crosses, or the like, keep saints days, sing carols within and about kirks, or observe other superstitious papistical rites, under the pecunial pains therein contained, for the first fault, and under the pain of death to the continuers therein. By King William's parliament, sess. 5. cap. 26, no Papist can make any gratuitous disposition or deed, in prejudice of their apparent heirs, declaring such disposition or deed to be null; and that it be judged gratuitous, unless the granter, writer, and witnesses, declare upon oath, before the judge of the bounds, that it was granted for an onerous adequate cause. By King William's parliament, sess. 9. cap. 3. these above mentioned acts are ratified, with all other laws made against Popery and Papists, especially these against Jesuites, priests, or trafficing Papists; and all sayers, and hearers of mass, and concealers of the same. Item, Whoever seizes any priest, Jesuit, or trafficing Papist, or their resetters, upon certificate of the conviction of the person seized by the judge, shall have 500 merks for his reward from the treasury, for which the receiver-general may be pursued before the Lords of session. Item, If it be proven that the said priest, Jesuit, or trafficing Papist, was held in repute such, or that he changed his name, and shall refuse the Formula of purgation subjoined to this act, it shall be sufficient ground for the council to banish him, never to return a Papist under pain of death, to be inflicted by the Lords of justiciary. Item, If any person be found in any meeting where there is any altar, mass-book, or other instruments of popish superstition, and shall refuse to purge, as above, it shall be sufficient ground to the council to banish, under any

any certification they ſhall think fit, even to that of death; and whoſoever diſcovers and ſeizes the ſaid baniſhed perſon, after his return, ſhall have the foreſaid reward of 500 merks. Item, The 8th act, parl. 1. Char II. is ratified; and any Proteſtant relation, or his Majeſty's advocate or ſollcitor, may purſue for the exhibition and education of children in the keeping of Papiſts; and the Lords of ſeſſion are impowered to modify an aliment out of the childrens or their parents means; and it is recommended to presbyteries to inform in this matter. Item, No Papiſt profeſſed, or not purged, can receive any voluntary deed or diſpoſition made to him of any lands, or real rights, or tacks of lands, or teinds, but the ſame are declared null, and to remain with the granter, and no action for warrandice or repetition of the price. Item, No Papiſt paſt the age of fifteen years, can ſucceed either as heir, or by other conveyance from the perſon to whom he may be heir, until he purge himſelf of Popery, as above; and if being educate in the Popiſh religion, he ſucceed as above, before the ſaid age, then he ſhall be obliged to purge before he attain the ſame; and the perſon ſo ſucceeding, failing in either of theſe caſes, devolves to the next Proteſtant heir, who is to be ſerved as ſuch to the defunct, and to have right to the eſtate and rents, from the ſaid irritancy, ay and while the perſon excluded, or his heir, purge himſelf, as above; in which caſe he is to be reponed as before the excluſion. The intervening rents, with the burden of current annualrents of debts, remaining with the Proteſtant ſucceſſor; but this excluſion to be without prejudice of creditors before the excluſion. Item, No Papiſt may grant any gratuitous deed in prejudice of his heir, but the ſame is declared null, ſave as to the affecting the granter's perſon and moveables. See the forecited 26th act, ſeſſ. 5. King William's parliament. Item, The Proteſtant on whom the ſucceſſion devolves by the ſaid excluſion, muſt proſecute his right within two years, elſe it falls to the next, and ſo on. Item, The Papiſt and his heir muſt renounce Popery within ten years after the ſaid irritancy, (minority not reckoned), or is to be excluded for ever; and the eſtate thus devolving, devolves with all its lawful conditions and burdens. Item, No voluntary right by a Papiſt in favours of his apparent, heir alſo a Papiſt, ſhall be of force, though prior to this

act, unless cled with infeftment or poſſeſſion, or proceeded in judgement prior thereto. Item, All diſpoſitions or deeds in favours of cloyſters, or other Popiſh ſocieties, are declared void, and to accreſce to the next Proteſtant heir to the granter. Item, No adjudication is to expire in the perſon of a Papiſt, but coming in the perſon of a Proteſtant, the legal being run, it expires within year and day thereafter, and no adjudication or real diligence is competent to a Papiſt, upon any gratuitous bond or deed. Item, That the Formula of purgation be taken before the council, or before the preſbytery, and reported within forty days to the council. Item, A Proteſtant apoſtatizing to Poperty, forfeits his eſtate immediately to his next heir, being Proteſtant, as if he were dead; and this next heir, if in pupilarity, is to be reckoned Proteſtant, if his education be ſuch; or if it be Popiſh, he is excluded until he purge, as above. Item, That no ſuſpected Papiſt be capable of any truſt of the perſon or affairs of minors, and that none employ them in ſuch truſts, until they purge as above, under the pain of a year's valued rent, or a thouſand merks, if the valued rent be leſs. Item, No ſuſpected Papiſt may teach any ſcience, art, or exerciſe in families, or out with, nor may a Proteſtant have a Popiſh domeſtic ſervant, under the pain of five hundred merks, which may be purſued by any Proteſtant; and, upon conviction, to have the ſame for reward. By the 28th act, ſeſſ. 6. of King William's parliament, whoever perverts a Proteſtant ſubject to Popery, ſhall be proceeded againſt as a trafficking Papiſt; that a Proteſtant ſervant turning Papiſt in a Popiſh family be puniſhed as an apoſtate; and the maſter, when required, is obliged to diſmiſs that ſervant, never more to be received by him, or any other Popiſh maſter, under pain of an hundred pounds; and that Popiſh maſters allow their ſervants due liberty to attend worſhip and catechiſing, under the ſaid pain; and that theſe ſervants uſe that liberty, under the pain of being baniſhed the pariſh. By the 5th act, parl. 1. Jam. VI. the ſayers and hearers of maſs, or ſuch as are preſent thereat, are puniſhed by confiſcation of all their goods, moveable and immoveable, and an arbitrary puniſhment of their perſons for the firſt fault, baniſhment for the ſecond, and death for the third fault. By the 122d act, parl. 12. Jam. VI. the ſayers of maſs, reſetters of Jeſuites, ſeminary Prieſts, and trafficking Papiſts, againſt the king's majeſty, and religion preſently

preſently profeſſed within this realm, is, and ſhall be a juſt cauſe to infer the crime and pain of treaſon, provided how ſoon they ſatisfy the prince and the kirk the penalty foreſaid ſhall not ſtrike againſt the reſetter. By the declaration of the eſtates, containing the claim of right, 11th April 1689, it is declared, that by the law of this kingdom, no Papiſt can be king or queen of this realm, nor bear any office whatſoever therein.

Act of Aſſembly againſt Popery.

§ 4. The lateſt and moſt comprehenſive acts of Aſſembly againſt Popery, are theſe: By act July 29. 1640, all idolatrous monuments are appointed to be taken down and deſtroyed; and presbyteries and ſynods are to ſee this work with all diligence performed. This is conform to the 64th and 90th canons, Concil. Carthag. "Ut reliquæ idolo-" rum radicitus extirpentur, ſimpliciter placuit peti a glo-" rioſiſſimis imperatoribus, ut reliquæ idololatriæ non ſo-" lum quæ ſunt in ſtatuis: ſed quæ ſunt in quibuſuis locis " vel lucis vel arboribus, omni modo deleantur." By Aſſembly 1642. ſeſſ. 7. and 1648. ſeſſ. 38. preſbyteries are appointed to convene known Papiſts in their bounds, and oblige them, within a month, to put from their company Popiſh friends and ſervants, and give their children above ſeven years of age, to be educated at their charges, by ſuch Proteſtant friends as the preſbytery ſhall approve, and find caution, within three months, to bring home ſuch of their children as are abroad, to be educated at the ſight of the preſbytery. The obſtinate are to be proceſſed *inſtanter*, and thoſe who comply are to confer with profeſſors in the next univerſity, in order to their converſion. Item, The government is to be ſupplicate for an act, that in no regiment that goes out of the kingdom, any Papiſt bear office, and the colonel to find caution for this effect: but the ſubſtance of this deſired act is already declared in the Claim of Right, and enacted by 9th act, parl. 1. Jam. VI. and the 5th act, parl. 2. Jam. VI. By the 8th act of Aſſembly 1699, they appoint all miniſters to ſtudy Popiſh controverſies more. Item, That all due endeavours be uſed to unite Proteſtants among themſelves. Item, That miniſters faithfully watch the flock committed to them, that ſo, by public preaching, private inſtruction and conference, apoſtacy may be prevented. Item, Miniſters are to deal wiſely and convincingly with thoſe who have fal-

len to Popery, and other corrupt practices, for their recovery. Item, When other means are ineffectual, presbyteries are appointed to proceed to church censure. Item, That according to the former acts of Assemblies, and acts of parliament, the names of Popish Priests and Jesuites, and trafficking Papists, and of those who have sent their children to Popish colleges and countries, be given in to each provincial synod, and by them transmitted to the respective magistrates, to the effect they be proceeded against according to law, Car II. parl. 3. act 6. Item, The General Assembly resolves, that application be made to the civil magistrate, as often as need requires, for the vigourous execution of the laws against Papists, Popish schoolmasters, mistresses, governors and pedagogues, and Popish meetings; and for seeing to the training up of Popish youth in the Protestant religion. By the Assembly 1704, scandalous persons turning Popish, or pretending to do so, to evite censure, shall, after due pains to reclaim them, be excommunicated. By the 17th sess of Assemb. 1700, and 9th sess Assem. 1703, no private acknowledgement of a Papist's renouncing that religion verbally, is to be held sufficient to admit them into church privileges; but their reception thereunto must be the deed of a church judicature, not below a presbytery By the 8th act of Assembly 1707, it is appointed that the synod in which these presbyteries are where Popery increaseth, do sometimes send ministers that are well acquainted with these controversies to assist the ministers of the bounds in conferring with the seduced, and for establishing others Item, Probationers, well seen in such controversies, are to be sent to assist the ministers in these parts, in preaching, that they may have the more time to instruct the people, and watch over them against Popery. All which acts and recommendations, as to ministers diligence against Popery, are revived by the 4th act of Assembly 1708. Calderwood, in his history, p. 594, tells us of an act against Papists made in that pretended Assembly holden at Linlithgow 1608, wherein they appoint, that at every service of any person as heir to his father, or any of his predecessors, he be not served by any judge without the testimonial of the bishop, and moderator of the presbytery, where he dwells, bearing the confession

confeſſion of his faith and integrity in the religion preſently profeſſed.

§ 5. By the 23d article cap. 14. of the French church diſcipline, all violence and unbecoming language againſt theſe of the Romiſh church, and even againſt prieſts and friars, ſhall not only be hindered, but alſo wholly ſuppreſſed, as much as poſſibly may be. Papiſts not to be mocked.

§ 6 By the 10th act of Aſſembly 1695, for preventing of the growth of theſe abominable hereſies of the Quakers, it is recommended to all church judicatures to uſe all proper means for reclaiming of them, and in caſe of their obſtinacy, to proceed againſt them with the cenſure of the church, but eſpecially againſt the ringleaders, or theſe who have apoſtatiſed from our holy faith. Apoſtate and ring-leading Quakers to be excommunicated.

§ 7. The Aſſembly 1701, by their 11th act, finds, that the writings of M. Antonia Bourignion, are fraughted with impious and damnable doctrines, as they are repreſented in the apology for her, condemned by the immediately preceding act, which exhibites to the world an epitome of her errors in the faireſt dreſs; ſuch as, 1. The denying the permiſſion of ſin, and the inflicting of vengeance and damnation for it. 2. The attributing to Chriſt a twofold human nature, one of which was produced of Adam, before the woman was formed, the other born of the Virgin Mary. 3. The denying the decrees of election and reprobation, and the loading theſe acts of grace and ſovereignity, with a multitude of odious and blaſphemous aſperſions, particularly, wickedneſs, cruelty, and reſpect of perſons. 4. That there is a good ſpirit and an evil ſpirit in the ſouls of all men before they are born. 5. That the will of man is unlimited, and that there muſt be in man ſome infinite quality, whereby he may unite himſelf to God. 6. The denying of the doctrine of divine preſcience. 7. The aſſerting of the ſinful corruption of Chriſt's human nature, and rebellion in Chriſt's natural will to the will of God. And, 8. The aſſerting a ſtate of perfection in this life, and a ſtate of putrifaction in the life to come; that generation takes place in heaven, and that there are no true Chriſtians in the world. Errors of Antonia Bourignion condemned.

TITLE

TITLE III.

Of Schism and Prelacy, and of the Laws and Acts for preventing Innovations and Errors.

Schism, what.

§ 1. ACcording to the canon law, "Schismaticus est "qui ab unitate ecclesiæ se separat," schism is to the church what a cut is to the natural body, and it may be where no heresy in doctrine is: It is a breaking of that church union and communion which ought to be among her members.

Schism about church-government.

§ 2. Schism in church-government is either about the government itself, or about the persons in whom it is lodged; which difference may occasion the erecting of altare contra altare. Schism may be in worship, when both the same doctrine and government is acknowledged, but communion is not kept in the Lord's Supper, according to Christ's appointment. This seems in part to have been the schism among the Corinthians, occasioned perhaps through the corruption of some members with whom others have scrupled to communicate.

When schism is to be proceeded against.

§ 3. The understanding having such influence upon the will and affections, and union having so much interest in both, the same will be more easily attained by persuasive reasonings than authoritative injunctions. Though the authority of a church may be interposed to condemn heretical and scandalous members, yet it is rarely found to be the way of uniting a rent church, but rather the way to govern an united church; for it often happens, where such divisions arise, that parties do reciprocally decline each other's authority: indeed, where schism is only a spreading, or but among few, who cannot be otherwise gained In that case, the censures of the church may be more successfully applied against them.

Prelacy declared to have been abjured, to have been the cause of many evils, Prelatists own that it is but of men. One

§ 4. The General Assembly, by their act December 8. 1638, having considered the proceedings of this kirk, and acts of General Assemblies in former years, the vote was stated, Whether, according to the Confession of Faith, (i. e. the national covenant) as it was professed in the years 1580, 1581, and 1590, there be any other bishop, but a pastor of a particular flock, having no pre-eminence nor power

power over his brethren? And whether, by that confeſſion, as it was then profeſſed, all other Epiſcopacy is abjured, and ought to be removed out of this kirk? The haill Aſſembly moſt unanimouſly (one only heſitating) did voice, that all Epiſcopacy, different from that of a paſtor over a particular flock, was abjured in this kirk; and therefore prohibites, under the pain of eccleſiaſtical cenſure, any to uſurp, accept, defend, or obey the pretended authority of biſhops in time coming. By the act of Aſſembly Auguſt 17. 1639, it is declared, that the changing of the government of the kirk from the Aſſemblies thereof, to the perſons of ſome kirk-men, under the name of Epiſcopal government, was againſt the Confeſſion of Faith 1580, againſt the order ſet down in the book of policy, and againſt the intention and conſtitution of this kirk, and which, from the beginning, hath been one of the chief cauſes of the bygone evils therein. The Aſſembly, in their anſwer, Auguſt 9. 1641, to the Engliſh miniſters, declare, they are perſuaded Preſbyterial kirk-government to be of God, and Epiſcopial government to be only of men; and they reſolve to hold the ſame conſtantly. Again, by their anſwer, Auguſt 3. 1642, to the declaration of the parliament of England, they ſay, the reformed kirks do hold, without doubting, their kirk officers and kirk government, by Aſſemblies higher and lower, in their ſtrong and beautiful ſubordination, to be jure divino; yet Prelacy, as it differeth from the office of a paſtor, is almoſt univerſally acknowledged by the Prelates themſelves, to be but an human ordinance, ſettled by human law for ſuppoſed conveniency: wherefore, by human authority, without wronging any man's conſcience, the ſame may be aboliſhed upon ſo great a neceſſity as is a hearty conjunction with all the reformed kirks. Among the cauſes of that faſt appointed by Aſſembly 1690, this is one, that the government of the church was altered, and Prelacy re-introduced without the church's conſent, and contrary to the ſtanding acts of our national Aſſemblies. From all which it appears, that the re-introducing of Prelacy, was always lay, and parliamentary only, and the government of the church by preſbyters was orderly and ſynodically eſtabliſhed by the guides and governors of the church, her preaching and ruling elders.

of the cauſes of national faſts; it never received the church's conſent.

§ 5. The

Prelacy abolished by the Claim of Right; its toleration treasonable.

§ 5. The meeting of estates in their Claim of Right, April 11. 1689, declare, that Prelacy, and the superiority of any office in the church above presbyters, is, and hath been a great and insupportable grievance and trouble to this nation, and contrary to the inclinations of the generality of the people ever since the Reformation, (they having reformed from Popery by presbyters,) and therefore ought to be abolished. In pursuance whereof, it is abolished by the 2d act of parliament 1689; and by the 3d act of the 1st sess. of Queen Anne's parliament, it is statute and declared high treason to quarrel, impugn, or endeavour, by writing, malicious and advised speaking, or other open act or deed, to alter or innovate the Claim of Right, or any article thereof. Which act is as a hedge about the Revolution establishment; for after the same was voted and enacted, never durst any presume to offer any act or overture for a toleration to Prelacy; whereas, before that, some offered in parliament draughts of acts for a toleration to Prelacy, and moved that the commission of the late Assembly 1703 should be called to the bar for asserting in their address, that the parliament's granting a toleration to Prelacy would be to establish iniquity by law.

The licentiousness of the press, how restrained and censured.

§ 6. The Assembly 1638, December 20. inhibiteth all printers within this church to print any act of this or preceding Assemblies, any Confession of Faith, any debates about present divisions, or any treatise whatsoever, which may concern the church of Scotland, without warrant from the clerk of the Assembly, or to reprint the same by any other not appointed by him: and that under pain of ecclesiastical censure. By the 14th chap. art. 19. of the French discipline, all printers and stationers are warned, not to print or sell books that shall concern religion or ecclesiastical discipline, without the consistory's allowance, and no book is to be sold that tends to advance idolatry, and corrupt good manners. And by the 16th art. of the foresaid 14th chapter, ministers, nor any else in the church, cannot print books made by themselves or others, touching religion, nor any way publish them without allowance from the presbytery or synod, or from those authorised by the synod to license books. By the 7th act of Assembly 1707, presbyteries are appointed to take special notice, of

of any book or pamphlet which has for its author or publisher any minister of this church, and examine if their be any thing therein contrary to her doctrine, worship, discipline or government, and that they censure such as shall transgress herein, according to the demerit of the cause. The sellers also and dispersers of erroneous and Popish books, are to be punished arbitrarily by the rubric of the 25th act, parl. 11. Jam. VI. But the statutory words run only against the home-bringers of such books, the books also are to be destroyed, and warrandice given to magistrates of burghs, with a minister, to intromit with them, without hazard of spulzie: de praxi, sheriffs and other magistrates intromit with such books without a minister's presence or concurrence; see Mackenzie, tit Heresy.

How overtures are turned into acts of General Assembly.

§ 7. For preventing innovations, sudden alterations, by passing of acts which may threaten the peace of the church, it is enacted, that before any Assembly make acts which are to be new standing rules and constitutions to the church, the same be first past as overtures, to be transmitted to the several presbyteries, and their consent reported to the next Assembly, who may pass the same into acts, if the more general opinion of the church agree thereto. See Assembly 1634, August 30. Assembly 1643, sess. 14. Assembly 1695, sess. 7. Assembly 1697, sess. 6. and by the act of Assembly 1700, sess. 17. any overtures of general concern proposed to the Assembly, after the first reading, are to lie on the table to be seen by all the members till the next day of the Assembly's sitting, and when transmitted, presbyteries are to consider of them, before the meeting of the synod, next after the Assembly, and their opinion is to be sent to the next Assembly in writing. When presbyteries observe this order, then the Assembly gathers the opinion of the church from the plurality of the written opinions returned; but in case a great number of presbyteries, should either be so well satisfyed, or so indifferent about the overture transmitted, or give such absolute trust and credit to their commissioners, that they give no opinion in the matter, in that case the opinion of the commissioners is to be looked upon as the opinion of their constituents.

What acts of Assembly may be repealed.

§ 8. The same authority and method that was necessary unto the framing of an ecclesiastic constitution, must be

interposed and used at its repealing, "Nam nihil est tam "naturale, quam eo genere quidque dissolvi, quo colli- "gatum est." By the 8th act of Assembly 1706, commission books are only to be attested in a negative style, even as those of synods; yet, by the 9th act of Assembly 1707, the actings and proceedings of the preceding commission are ratified, and approven positively and solemnly, as former commissions had been, because of their extraordinary faithfulness, zeal, and diligence in addressing and petitioning the parliament against the dangers and evils feared from the then designed incorporating union with England.

Errors and separation, how censurable.

§ 9. By the 21st act of Assembly 1696, and by the 12th and 18th acts of Assembly 1704, all ministers and members of this church are discharged to publish or vent, either by speaking, writing, or printing, by teaching or preaching, any doctrine, tenet, or opinion, contrary unto any head, article, part, or proposition of the Confession of Faith of this church, and particularly the venting any Arminian or Socinian errors; and church judicatures are ordained to advert to any who shall teach or vent such errors, and proceed to censure them for the same. And also all presbyteries are enjoined to censure such persons within their bounds, who do carry on divisive courses, and withdraw from communion with this church, under a pretext of zeal to her doctrine, worship, discipline, and government, and that all means be used for reclaiming such misled people.

Ministers are to observe the public orders of this church.

§ 10. By the 6th act of Assembly 1690, it is recommended to presbyteries, to take notice of all ministers, whether the late conforming incumbents or others, who shall not observe fast and thanksgiving days, indicted by the church, or who shall be found guilty of administring the sacraments in private, or celebrating clandestine marriages without proclamation of banns, and to censure them accordingly.

The Confession of Faith to be subscribed with a Formula, and by whom.

§ 11. For retaining unity and soundness of doctrine, all probationers licensed to preach, all intrants into the ministry, and all other ministers and elders, all schoolmasters, chaplains, governors, and pedagogues of youth, are appointed to subscribe, at the sight of presbyteries, their approbation of the Confession of Faith, as the confession of their faith, Assem. 1690, act 7. Assem. 1700, 10th and

11th

11th acts. And by the 11th act of Assembly 1694, any of the late conform ministers may be received by the commission of the Assembly into ministerial communion, who shall acknowledge, engage, and subscribe, upon the end of the Confession of Faith, the following Formula. And by the 16th act of Assembly 1705, all students of theology licensed to preach, and all ministers and elders are in like manner to subscribe the same; the tenor whereof follows: "I A. B. do sincerely own and declare, the above "Confession of Faith, approven by former General Assemblies, and ratified by law in the year 1690, to be "the confession of my faith, and that I own the doctrine "therein contained to be the true doctrine, which I will "constantly adhere unto; as likeways, that I own and "acknowledge the Presbyterian government of this church "now settled by law, by kirk-sessions, presbyteries, provincial synods, and General Assemblies, to be the only "government of this church, and that I will submit thereto, concur therewith, and never endeavour, directly "nor indirectly, the prejudice or subversion thereof; and "that I shall observe uniformity of worship, and of the "administration of all public ordinances, as the same are "at present performed and allowed." See book 1. tit. 4. sect. 7.

§ 12. The synods of this national church, in the year 1702, considering the great affair of the union of the two kingdoms, then under deliberation, did, for mutual edification, and strengthening one anothers hands in the Lord's work, appoint each minister and probationer, judicially, in their respective presbyteries, to profess and declare their resolutions and engagements to maintain, by God's grace, the true doctrine of this church, according to our Confession of Faith, and the purity of worship, discipline, and Presbyterian government of this church, founded on the word of God, and that they promise to disown all principles contrary thereto.

Synodical associations for securing the church government.

§ 13. The fourth article of cap. 23. of the Confession of Faith, has these words; infidelity, or difference in religion, doth not make void the magistrates just and legal authority, nor free the people from their due obedience to him. Which are generally understood thus, *viz.* That the principles of our holy and peaceable religion, do not deny

How the 4th article of the 23d chapter of the Confession of Faith is generally understood.

deny but infidels and Papists may be lawful magistrates in such countries or kingdoms where these false religions are established, and if any of our religion happen to sojourn in these territories, they ought notwithstanding to own their just and legal authority, and obey their lawful commands. But in other kingdoms or countries, such as this of Scotland is, where professing and defending of the Protestant religion is made a condition of government betwixt the magistrate and people, in that case, if he shall either be of, or fall away to a false religion, and violate the said condition and agreement, then there is ground and reason for the peoples representatives, to claim their right, and declare him on that account to have forfeited his right to the crown, and declare the throne vacant, as did our meeting of estates, April 11 1689.

Separatists not to be familiarly conversed with.

§ 14. The act of Assembly, Aug. 31. 1647, considering how the errors of independency and separation have spread in England so much, that exceeding great errors and blasphemies have issued therefrom, and are sheltered thereby: therefore, all persons are discharged from frequent and familiar converse with persons tainted with such errors, or to import, sell, or disperse, such erroneous books or papers; and it is recommended to the magistrate, to be assisting to ministers, in the execution of this act. There is a former act of Assembly, August 9. 1643, to the same purpose; and by the 10th act of Assembly 1701, the foresaid act 1647 is ratified. See § 6.

None are to withdraw from their own parish kirk.

§ 15. By the act of Assembly, Aug. 24. 1647, for preserving order, peace, and unity in the kirk, preventing of schism and for maintaining that respect which is due to the ministers of Jesus Christ, every member of a congregation is ordained to keep his own parish kirk, to communicate there in word and sacraments; and if any person shall usually absent themselves from their own congregation, except in urgent cases, made known to, and approved by the presbytery, the ministers of those congregations whereto they resort, shall both in public, by preaching, and in private admonition, shew their dislike of their withdrawing from their own minister: likeas, the minister of that congregation from which they do withdraw, shall labour, first by private admonition to reclaim them, and if that fail, they are to be cited to the session, and censured as contemners of

of the order of the kirk; and if the matter be not taken order with there, it is to be brought to the presbytery.

Disorderly ministers and preachers to be particularly noticed.

§ 16. By the 6th act of Assembly 1708, all presbyteries and synods are strictly and peremptorily appointed to take particular notice of ministers, preachers, or others, who fall into irregularities or schismatical courses, that they duly censure them, according to the merit of their fault, even to deposition of ministers and elders.

Meetings merely on pretence of religion to be shunned.

§ 17. The Assembly, Aug 4. 1641, doth charge all ministers and members of this kirk, to suppress all impiety and mocking of religious exercises, and that they eschew all meetings under the name and pretext of religious exercises, which are apt to breed error, scandal, schism, neglect of duties in particular callings, and such other evils.

The church's name is not to be used without her consent.

§ 18. For preventing of abuse to the kirk in general, and ministers in particular, the Assembly, by their act, Aug. 5. 1642, doth prohibite and discharge all and every one, to pretend or use the name of ministers to any petition, declaration, or such like, without their knowledge, consent, and assistance; and the transgressors hereof are to be proceeded against with the highest censures of the church.

No new oath in the cause of religion to be taken without advice of the the church.

§ 19. The General Assembly injoins all the members of this kirk to forbear the swearing, subscribing, or pressing of any new oaths or bonds, in the cause of reformation, without advice and concurrence of the kirk. See act and declaration July 28 1648.

Some customs of the church were acknowledged to be indifferent.

§ 20. In the General Assembly's answer, February 13. 1645, to the Assembly of divines in England, they seem to acknowledge, that they have some practices in this church which are in themselves indifferent; for they express themselves thus: nevertheless in other particulars, we are resolved, and do agree to do as ye have desired us in your letter; that is, not to be tenacious of old customs, though lawful in themselves, but to lay them aside for the nearer uniformity with the kirk of England; that rather than it fail on our part, we do most willingly part with such practices and customs of our own, and without the violation of any of Christ's ordinances.

None but Protestants capable of any place of trust.

§ 21. It is no small security to the Protestant religion, and tends much to the preventing of innovations and errors, that none are capable of civil trust, but true Protestants; for

for they who profeſs not the true religion, contained in the Confeſſion of Faith, eſtabliſhed by K. Jam. VI. his firſt parliament, may not be a judge, procurator, nor member of any court, cap. 9. parl. 1. Jam. VI. And by cap. 5. parl. 2. Jam. VI. this act is extended to all and whatſoever offices, without any exception, or reſtriction, in all time coming; and ſuch churchmen as will not ſubſcribe the above-mentioned Confeſſion are deprived; and all ſuch as refuſe to ſubſcribe the ſame, are to be repute rebels and enemies to the king and his government, cap. 46. 47. parl. 3. Jam. VI.

TITLE IV.

Of Witches and Charmers.

Acts of Aſſembly for preventing of witchcraft, grounds for apprehending of, and how to deal with them.

§ 1. OUR General Aſſembly, July 29th, 1640, ordains all miniſters carefully to take notice of charmers, witches, and all ſuch abuſers of the people, and to urge the acts of parliament to be execute againſt them. By another act, Auguſt 19. 1643, miniſters muſt be careful to inſtruct the people, preſs holineſs of life upon them, and uſe the cenſure of the kirk againſt profane perſons; moreover, let the people ſeek knowledge, ſtudy to believe, walk in holineſs, and be inſtant in prayer; all which is propoſed as means to prevent the growth of witchcraft; and further, presbyteries are ordained to take under conſideration, by what other ways or means theſe ſins may be tried, reſtrained, and condignly cenſured and puniſhed, eccleſiaſtically and civilly. In purſuance whereof, the Aſſembly Auguſt 6. 1649, for adviſing anent the trial and puniſhment of witchcraft, charming, and conſulting, there is a commiſſion granted to one and twenty miniſters, for a conference in the ſaid matter, with nine lawyers, and three phyſicians: and in the Aſſembly 1700, among the unprinted acts, you will find a committee of miniſters appointed to attend the Lords of council and juſticiary concerning witchcraft, when called thereto by their Lordſhips. By the Aſſembly Auguſt 5, 1642, preſbyteries are ordained to give up to the Lords of juſticiary the names of witches, ſorcerers, and charmers; and becauſe ſuch ſins proceed often from ignorance, therefore all miniſters are ordained (eſpecially

(especially in the North, where these sins are more frequent) to be diligent in preaching, catechising, and conferring to inform their people therein. By the forecited act of Assembly 1643, they declare the occasions of witchcraft to be these especially, *viz.* extremity of grief, malice, passion, and desire of revenge, pinching poverty, and solicitation of other witches. They say the reasons of Satan's prevailing are, gross ignorance, infidelity, want of love to the truth, and profaneness of life. The means they propose for bringing them to a just punishment, are, that a commission be granted to some gentlemen and magistrates, within the bounds of such presbyteries as shall crave it, giving them power to cause apprehend, try, and execute justice upon persons guilty of such crimes. They declare the grounds for apprehending witches to be these, A reigning report of witchcraft, backed with delations of confessing witches, being confronted with them; for it is found, that the delations of two or three confessing witches hath ordinarily proved true; as also, depositions of honest persons concerning evil deeds committed, or cures used by them, may be a ground for apprehending them. Mackenzie, on this title, says, that none should be apprehended for witches except it appear by the event of the inquisition, that they lie under many and pregnant presumptions, such as, that they are defamed by other witches; that they have been themselves of an ill fame, that they have been found charming, or that the ordinary instruments of charming be found in their houses; and it is to be remembred, that "Ad assumendas informationes, sufficiunt levia judicia, sed gravia requiruntur ad hoc ut citetur reus et ut judex specialiter inquirat." By the foresaid act of Assembly, after they are apprehended, honest and discreet persons should be appointed to watch them, to prevent their being suborned, and hardened by others, or destroying themselves; and ministers should be careful at all times, especially morning and evening, to deal with them, by prayer and conference, while they are in prison or restraint.

§ 2. Witchcraft was crimen utriusque fori by the canon-law, and with us, the kirk session did use to inquire into it in order to the scandal, and take the confession of parties, or receive witnesses against them; but since so much weight

Who are judges competent thereto.

weight is laid upon the depoſitions there emitted, they ſhould be very cautious in their procedure. By the 73d act parl. 9. Queen Mary, although inferior judges may concur to the puniſhment of this crime, by apprehending and impriſoning the parties ſuſpect, yet ſeeing the relevancy is oft-times ſo intricate, and the procedure requires neceſſarily ſo much arbitrarineſs, and the puniſhment is ſo ſevere, upon theſe conſiderations, the cognition of that crime ſhould be ſolely appropriate to the juſtice court.

What is relevant to infer the crime of witchcraft.

§ 3. Paction to ſerve the devil is certainly per ſe relevant, without any addition, providing they acknowledge they knew him to be the devil. This paction is either expreſs, performed by a formal promiſe given to him, then preſent, to ſerve him; or by preſenting a ſupplication to him, or by giving the promiſe, to a proxy impowered by the devil for that effect, which he indulgeth to ſome who dare not ſee himſelf. There is likewiſe a tacite paction with the devil, when a perſon uſeth the words or ſigns which ſorcerers uſe, knowing them to be ſuch; and this is condemned as ſorcery, and is relevant to infer the crime of witchcraft: but to uſe theſe words or ſigns, when the uſer knows them not to be ſuch, if the ignorance be probable, and the uſer be content to abſtain, it is no ſuch crime. Renouncing of baptiſm is moſt relevant per ſe to infer the crime of witchcraft. Witches uſe to confeſs, that in ſo doing they uſe this ſolemnity, by putting one of their hands on the crown of their head, and the other beneath the ſole of their foot, at which time he gives them new names.

The devil's mark not per ſe relevant.

§ 4. To libel the devil's mark is not per ſe relevant, unleſs it be confeſſed by them, that they got that mark by their own conſent, quo caſu, it is equivalent to a paction. The prickers ſay, if the place blood not, or if the perſon be not ſenſible, then he or ſhe hath the mark; which is given by a nip in any part of the body, and is blue, as is alledged; but it is hard to diſtinguiſh any ſuch marks, a nævo, clavo, vel impertigine naturali. Where threatnings are ſpecific, bearing a promiſe to do a particular ill, and when charms are uſed to obtain its execution, and when it is known that the threatner had a preceding enmity againſt the perſon threatned, under theſe circumſtances, "malum minatum & damnum ſecutum" libelled, would

Threatnings to do miſchief how relevant.

would ſeem to be relevant: yet it is ſafer to puniſh theſe threatnings with ſome milder puniſhment than death, as crimen in ſuo genere, and not as witchcraft. Indeed if the perſon who uſed the charms, knew them to be ſuch, as witches and ſorcerers do make uſe of, for procuring ſuch miſchief, it is relevant to infer witchcraft, as hath been ſaid. The uſing of magic arts or charms, though for good ends, as for the curing of diſeaſes in men or cattle, has no place to make a relevant defence. Since the law cannot know exactly what efficacy there is in natural cauſes, it may very well diſcharge all ſuch acts, wherein there is no neceſſary connection, inter cauſam & effectum, as it pleaſes, under the pain of witchcraft: nor can theſe who are accuſed complain of ſeverity, ſince ſibi imputent that uſe theſe forbidden things; and therefore, ſince the law and practice hath forbidden all charms, it is moſt juſt that theſe who uſe the ſame ſhould be ſeverely puniſhed, whatever the pretext be upon which they are uſed, or after whatever way and manner, or to whatever end, whether good or bad. Conſulting with witches, when done knowingly, intentionally, and in earneſt, or a profeſſing of necromancy, which was a propheſying by departed ſpirits, as alſo predictions and reſponſes by the ſieve, and the ſhear, and by the book, and all ſuch cheats and ſpecies of ſorcery. See the 73d act, parl. 9. of Queen Mary. When perſons are delated by other witches, or per defamationem, which we call common report, and open fame, and thereupon libelled, that article is never ſuſtained as relevant per ſe to infer witchcraft; yet ſometimes articles that are of themſelves irrelevant, are ſuſtained relevant, being joined with that of fame and delation; but it is hard, and ſeems unjuſt to compoſe a relevant libel out of articles that are per ſe irrelevant.

Uſing of charms, tho' for good ends puniſhable.

Conſulting with witches puniſhable.

What defamation by witches imports.

§ 5 The relevancy of this crime being diſcuſſed, the ordinary probation of it is by confeſſion or witneſſes. It ſhould be evident, that the perſon confeſſing is not weary of life, or oppreſſed with melancholy. Albeit "hic non "ſemper requiritur ut conſtet de corpore delicti," this being a crime which conſiſts in animo, yet the confeſſion ought ro be ſuch, as contains nothing in it that is impoſſible. It is condeſcended by lawyers, that "ſuccubi & in- "cubi ſunt poſſibiles," that the devil may lie in the ſhape

When puniſhment follows on witches confeſſion, or by probation of witches.

of a man with a woman, or in the ſhape of a woman with a man, having firſt formed to himſelf a body of condenſed air; or that he may tranſport witches to their public conventions, and upon ſuch confeſſions ſome have been puniſhed as witches. The probation of this crime by witneſſes is very difficult, and therefore *ſocii criminis*, or other confeſſing witches are adduced: but yet, theſe do not prove witchcraft ſolely, though dying and penitent: whereas it may be doubted if the conſulting of witches may not be proved by two of them who were conſulted; for if this be not a ſufficient probation, it may ſometimes be impoſſible to prove conſulting any other way; but if ſuch be ſuſtained, why may not *ſocii criminis* be allowed as habile witneſſes. The perſons injured by witches, are admitted witneſſes againſt them, but cum nota, women are received witneſſes in this crime. Witches do rarely weep, becauſe they are ordinarily hardened.

Witches may be deſired to take off diſeaſes.

§ 6. It is thought lawful, by ſome, for all who are bewitched, to deſire the bewitchers to take off the diſeaſe, providing the ſame can be removed by taking away the old charm, without any new application to the devil; which practice ſeems yet to be forbidden, Iſ. viii. 19. "And when "they ſhall ſay unto you, ſeek unto them that have familiar ſpirits, and unto wizards that peep and that mutter: "ſhould not a people ſeek unto their God? for the living "to the dead?" Yet it is not unlawful for any to remove the charm, or ſign of it, if it be in their power to do it, without any application to the devil or his inſtruments.

How they torment by images, and of the puniſhment of witches.

§ 7. Witches do likewiſe torment mankind, by making images of clay or wax, and when they prick them, the perſons do find extreme torment, which doth not proceed from any influence theſe images have upon the body tormented, but the devil doth by natural means raiſe theſe torments in the perſon, at the very ſame time that the witches do prick, or pounce, or hold to the fire thoſe images. Witches confeſſing this manner of torment, may very judicially be found guilty, ſince "conſtat de corpore de-"licti, de modo delinquendi, & inimicitiis præviis." The puniſhment of this crime is with us death, and the doom ordinarily bears, to be worried at the ſtake and burnt.

Fortune-tellers, who, and how puniſhed.

§ 8. Fortune-tellers are thoſe who do profeſs to reveal and diſcover ſecrets, by means altogether inept or unlawful,

ful, and they are punished with us arbitrarily, not capitally; and by the law of England, cited by Mackenzie on this title, such persons are to be imprisoned for the space of a whole year, during which time they are to be pillored quarterly.

TITLE V.

Of Blasphemy, Cursing, profane Swearing, and Lottery.

§ 1. BLasphemy is a divine lese-majesty or treason, and is committed either by denying that of God which belongs to him, or by attributing to him that which is absurd. These who swear by the head or feet of God, are guilty of this crime by the canon law, "Videntur enim amplecti anthromorphitarum hæresin, quæ "membra Deo tribuebat." They are also, according to them punishable, who delate not blasphemers. Blasphemy, what.

§ 2. By the 21st cap. parl. 1. Car. II. it is appointed, that whoever, not being distracted in his wits, shall rail upon or curse God, or any of the persons of the blessed Trinity, be processed before the chief justice, and being found guilty, punished with death From which act it is clear, that this crime can only be tried before the justices, and that distraction is only a relevant defence against the punishment. So that passion, rusticity, or raillery, excuse not. Yet if the denying of God's attributes, or any of the persons of the holy Trinity, proceed from ignorance, and the denial be not obstinately persisted in, they should be pitied rather than punished. It seems to me a good defence against the punishment of blasphemy, when one is compelled to blaspheme through torture, as the saints did through the torments and madness of Saul's persecution, Acts xxvi. 11. and Solomon, Eccl. vii 7. says, "Surely "oppression maketh a wise man mad;" that is, it maketh him speak, or act, like a madman. Its punishment, and defences against it.

§ 3. By the 103d cap. Jam. VI. parl. 7. magistrates to burgh and landward, are ordained to appoint censors in public markets and fairs, with power to exact the pains of swearing, and that housholders delate offenders within their houses, under the pain of being esteemed as offenders themselves. How cursing and profane swearing is punished, and the defences against its punishment.

themſelves. By cap. 16. parl. 5. Queen Mary, particular pains are ordained againſt profane ſwearers, with gradual augmentations, and ending in baniſhment: which acts are ratified by Charles II. parl. 1. ſeſſ. 1. cap. 19; and farther it is enacted, That who ſhall ſwear or curſe, ſhall pay, the nobleman 20 pounds, the baron 20 merks, the gentleman, heritor, or burgeſs, 10 merks, the yeoman 40 ſhillings, the ſervant 20 ſhillings, *toties quoties*; and the miniſter the fifth part of his ſtipend, to be applied to pious uſes, the one half in the pariſh where the offence was committed, and the other half to be betwixt the informer and proſecutor, and other uſes, at the ſight of the judges, as in the act about juſtices of the peace; and the inſolvent to be puniſhed in their perſons. By the French church-diſcipline, cap. 14. art. 24. profane ſwearers, who, through cuſtom or anger, take the name of God in vain, after one or two admonitions, if they deſiſt not, ſhall be ſuſpended the Lord's table: ſo that cuſtom and paſſion do not defend againſt puniſhment. But whether paſſion will excuſe, at leaſt in part, from being puniſhed as a ſwearer and curſer, when provocked thereto while employed about lawful honeſt buſineſs, I think needs be no difficult queſtion; yet no lawyer will ſay, that anger doth leſſen this vice, committed by him who is unlawfully employed, as in playing at cards, or in exceſſive and unſeaſonable drinking: ſee Mackenzie on the criminal law, p. 26.

Lottery ſometimes lawful, and ſometimes not.

§ 4. There is a lottery which is neceſſary, and uſeful in ſome caſes, for ending of debates and controverſies among men; as for example, where there is one adjudication in favours of divers creditors, they muſt have their preference by lot, in choice of the rooms of lands adjudged, See Stair's Inſtit. p. 75. 626, and 648. So the land of Canaan was divided among the Iſraelites by lot. But there is a luſory lottery, ſuch as playing at cards, &c. which is condemned by the practice of moſt who have the commendation of good Chriſtians in this church; and by the Aſſembly 1638, ſeſſ. 23. 24. art. 9. carding and dicing are noted as unlawful games: and by the 50th canon, Concil. ſexti in Trullo, "Nullum omnium, ſive clericum, ſive laicum "ab hoc deinceps tempore alea ludere permittimus, ſiquis "autem hoc deinceps facere ab hoc tempore aggreſſus fu-"erit, ſi ſit quidem clericus deponatur, ſi laicus, ſegrege-"tur"

" tur." To discourage this kind of lottery, it is enacted, by James VI. parl. 23. cap. 14. that none play at cards or dice in any common house, town, hostelry, or cook's house, under the pain of forty pounds to the keeper of the said house for the first, and loss of liberty for the second fault; and that there be no playing in a private house, except where the master plays; and if more be won in twenty four hours than one hundred merks, it shall be consigned in the kirk treasurer's hands in Edinburgh, or in the collector for the poor his hands in the country. And magistrates of burghs, and sheriffs, and justices of peace in the country, are impowered to pursue for the superplus winning, or otherwise are declared liable to the informers for the double; whereof the half to himself, the other to the poor.

TITLE VI.

Of the Profanation of the Sabbath; of not observing Fast and Thanksgiving Days; of Withdrawers from, and Disturbers of the Public Worship, and Observers of Superstitious Days.

§ 1. THE Assembly discharges the breach of the Sabbath by labouring either in seed-time or harvest, or by going of mills, salt-pans, fishing salmon, or white fish, under pain of incurring the censures of the kirk; and for preventing its profanation, they appoint both diets, fore and afternoon, to be kept even in landward for public divine service, 17th December 1638, and sess. 21 1639. The Assembly likewise declares, that these acts made against breach of the Sabbath, shall not only reach the servants, who actually work, but also the same shall be extended against their masters and hirers, 14th August 1643. By act of Assembly 18th June 1646, all such skippers and sailors who begin any voyage, or loose any ships, barks, or boats, out of road or harbour on the Lord's day, are to be censured. By sess. 38. 1648, elders are to take notice, how such as are within their bounds keep the kirk, and how the time is spent before and after public worship. By the 25th act of Assembly 1690, all unnecessary sailing and

How profanation of the Sabbath is censured and punished.

and travelling is prohibited on the Lord's day. Item, By act of Assembly 1705, sess. 1. ministers are to contribute their endeavours for suppressing gross profaning of the Lord's day, especially idle strolling on the streets of Edinburgh, peer and shore of Leith, King's-park. &c. and that by an impartial and prudent exercise of discipline. By the 12th act of Assembly 1708, for the better observation of the Lord's day, they appoint some to be sent from each presbytery within this church to attend the Lords of justiciary, at their circuit within their bounds, and then to represent the profanation of the Lord's day by travelling thereupon, carrying goods, driving of cattle, and other abuses; and they seriously recommend it to the said Lords, to restrain and punish the foresaid abuses, which the Assembly will acknowledge as a singular service done to God and this church. And all ministers are injoined, to advertise their people, among whom such practices are, of the great hazard their immortal souls are thereby in; and that if they continue therein, there will be a necessity to represent them as such transgressors to the foresaid Lords. So much respect doth our law pay to the Sabbath or Lord's day, that it cannot be taken for redemption of lands, and a wood-setter cannot be obliged to attend and perform the requisites of consignation, by numeration of money, perusal of writs, and subscribing a renunciation on the Sabbath day. It is relevant to alledge, that an arrestment or horning is null, as being execute upon a Sabbath day; and poinding on the Lord's day, or on solemn days appointed by church or state for humiliation or thanksgiving, are void and punishable, See Stair's Instit. p. 336, 375, 411, and 728. And if the law did not thus order it, the conscientious observers of the Lord's day would certainly be molested, and advantage taken of them by wordly wretches. and contemners of holy things. By cap. 70. parl. 6. Ja. VI. gaming, playing, passing to taverns, or alehouses, selling of meat and drink, and willful remaining from kirk in time of sermon or prayers, is discharging under the pain of twenty shillings, and if the offenders be unable to pay, they are to be put in the stocks or joggs. Item, By cap. 18. sess. 1. parl. 1. Car. II. all salmon fishing, going of salt-pans, mills or kills, hireing of shearers, carrying of loads, keeping of markets, and using of merchandise on that

that day, and all other profanations thereof are discharged, under the pain of twenty pounds for salt-pan, mill, or kill, and ten pounds for each other profanation, to be applied as in title 5. § 3. and that the insolvent be punished in their persons. By the 14th act of parl 1695, it is declared lawful to all burghs, not only of royalty, but of regality, barony, and villages, and kirk towns, whose weekly markets are kept on Mondays and Saturdays, to change and alter the same And the said burghs and villages are to make timeous intimation of the change to the next adjacent burghs, and providing they pitch not upon the market days of any burgh royal, or of any other market town within four miles.

How some proclamations allowing the profaning of the Lord's day, agree with the civil law.

§ 2. King Charles I. was prevailed on by Laud and his faction (little to his credit) to publish his declaration concerning recreations on the Lord's day after evening prayer, dated 18th October, in the th year of his reign, which he founds upon another of his fathers to the same purpose in the year 1618. He declares his pleasure was, that his good people should not be hindered after the end of divine service on Sundays from their lawful recreations, such as dancing, either men or women, archery, leaping, vaulting nor from having of May-games, Whitson-ales, Morris-dances, and setting up of May-poles, or other sports therewith used, but he debars from the privilege of these sports all recusants that abstain from coming to church and divine service How this agrees with the civil law; you may see in the end of the title de feriis, in Justinian's codex "Dominicum diem ita semper honorabilem decernimus et "venerandum, ut a cunctis executionibus excusetur, nul-"la quenquam urgeat admonitio, nulla fide jussionis fla-"gitetur exactio, taceat apparitio, advocatio delistecat. Sit "ille dies a cognitionibus alienus, præconis horrida vox si-"lescat; respirent a controversis litigantes. Et postea, nec "hujus tamen religiosi diei otio relaxantes, obscænis quen-"quam patimur voluptatibus ditineri, nihil eodem die sibi "vendicet scæna theatralis, aut circense certamen, aut "ferarum lacrymosa spectacula; et si in nostrum natalem "celebranda solemnitas inciderit differatur."

Non-observers of fast and thanksgiving days punishable.

§ 3. The non-observers of fast and thanksgiving days, may be punished as profaners of the Sabbath, I mean at least, with the like punishment; for by the acts of parliament

ament 1693 and 1695 appointing fasts, the not-observers are punished more severely; and I know nothing to hinder the church from censuring such, as they do profaners of the Sabbath.

Disturbers of public worship, how punished.

§ 4. By cap. 27. parl. 11. Jam. VI. it is enacted, That troublers of the kirk, or who raise any fray therein, or in the kirk-yard, in time of divine service, be punished by loss of all their moveables. If the magistrate be present, no doubt, he may ordain the disturbers to be removed, and secured, till they find bail to answer therefor.

Observers of superstitious days censurable.

§ 5. By the act of Assembly 13th February 1645, it is unanimously ordained, That the observer of Yule-day, or other superstitious days, shall be proceeded against by kirk censures, and shall make their public repentance therefor in the face of the offended congregation. And if masters of schools or colleges grant vacancy on that day, they are to be cited to answer to the next Assembly by the ministers of the place; and no vacancy is to be granted at that or any time thereafter in compensation thereof. And scholars guilty herein, are to be corrected by their masters; but if they refuse to subject themselves to correction, or be fugitives from discipline, they are not to be received into any other school or college within the kingdom, By the 22d cap. sess. 2 parl. K. William and Q. Mary, the keeping of Yule vacancy, and all observation thereof, is discharged.

The church of Scotland hath no anniversary fast or feast days.

§ 6. This church hath no anniversary feast or festival days, but doth only set apart a day or days for thanksgiving or humiliation, as emergent providences do call for. By the 1st act, parl. 15. Jam. VI. the 5th day of August is appointed to be a day of thanksgiving to God, for King James his preservation from the treasonable attempt of the Earl of Gowrie and his brother; but the truth of this matter being much questioned by many, it never received universal obedience, and at length turned wholly into desuetude. By parl. 1. sess. 1. cap. 17. and parl. 2. sess. 3. cap. 12. Car. II. the 29th day of May is appointed for the solemn commemoration of his birth and restoration; and, for that end, that it be set apart as a holy day unto the Lord. But one of the reasons why the Presbyterians did not keep this day is, because, in the act of parliament appointing it, there is a long preface full of black aspersions upon

upon the whole church and nation, and ſuch reflections upon religion and the work of God, as cannot be read without horror. And they were followed with acts that deſtroyed the church-government, contrary to the national ſolemn engagements, and gave a deep wound to true religion; ſo that however the King's reſtoration might otherwiſe have been matter of joy, yet in this reſpect it could not be ſo to any in this land that had a true regard for the intereſt of religion. Our Prelatiſts did uſe to obſerve the 30th day of January, as an humiliation day, becauſe upon it King Charles I. was beheaded in England, by the authority and power of the uſurpers and ſectaries there; but though that horrid fact was ſtill deteſted and abhorred, both by this church and kingdom, yet we never would obſerve it, becauſe of our notour innocence in that matter. It is true, it is our duty to mourn for the ſins of others, but not as our own ſins, except we have had ſome ſinful active acceſſion thereto.

§ 7. It is not to be reputed an obſerving of ſuperſtitious days, when people, in obedience to civil authority, do refrain from work thereupon, according to the 21ſt act, cap. 14. of the French church diſcipline. What is not a ſuperſtitious obſerving of days.

TITLE VII.

Of ſlandering, and aſſaulting of Miniſters, beating and curſing of Parents, and Injuries perſonal and real.

§ 1. RAiſing of ſcandals and prejudices againſt miniſters, being ſo obſtructive to the ſucceſs of the goſpel, the Aſſembly, by their act Auguſt 6. 1642, doth ordain preſbyteries and ſynods to proceed diligently againſt all perſons that ſhall reproach miniſters, with the cenſure of the kirk, even to the higheſt, according to the degree and quality of the ſcandal. Slandering of miniſters to be cenſured.

§ 2. By the 27th act, parl. 11. James VI. and act parl. 1. Car. I. and act 5. ſeſſ. 1. parl. 2. Car. II. it is appointed, that who invades or puts violent hands, or offers violence to miniſters, by themſelves, their men, tenants, or ſervants, or any others of their hounding out or allowance, for whatever cauſe, ſhall be puniſhed by tinſel of move- Violence offered to miniſters how puniſhed.

ables, the one half to the King, and the other half to the party offended, for the violence allenarly; but prejudice of greater punishment, if any higher crime concur, such as mutilation or slaughter; and that landlords, heritors, and chiefs of clans, where the invaders dwell or haunt, be holden, upon complaint of the party, to exhibite them; and if, after legal intimation made to the said landlords, &c. the said delinquents be found within their bounds, haunting openly for ten days, that they be holden as connivers, and be obliged to exhibite them under the like punishment: But by the 57th act of parliament 1685, it is ordained, that whosoever shall be found guilty of assaulting the lives of ministers, or of invading or robbing their houses, or actually attempting the same, shall be punished with death.

Beating and cursing of parents now punishable.

§ 3. By the 20th act, sess. 1. parl. 1. Car. II. beating or cursing of parents is declared to be punishable by the law of God with death, and therefore ordains, that whatsoever son or daughter, above the age of sixteen years, and not distracted, shall beat or curse his father or mother, he shall die without mercy; but if they be within the age of sixteen, and past pupillarity, they are to be punished arbitrarily.

Verbal injuries what.

§ 4. Verbal injuries are committed by unwarrantable expressions, as to call a man a cheat. Calvin, in his lexicon juridicum, says, That "Diffamare est per diversas "partes famam divulgare, facta vitiorum commemorati-"one." In libelling of such injuries, there is requisite, 1st, that the particular expressions be distinctly condescended on, that the injury may be accordingly estimate. Next, that the calumniandi, or injuriandi animus, the design of injuring, as well as the injuring words, must be libelled and proven, except the words infer so clearly the injury, that there is no necessity to libel the design. In the last place, that the pursuer did presently resent the injury, and thereupon did signify, either expressly, or by some other acts, his dissatisfaction therewith; for, if he was of such a temper as not to signify any resentment thereof at first, the law will not allow him to repent of that good humour. Bockelman, in his compend. of the institutions of the civil law, says, that "injuria est delictum, quo quid ad contume-"liam vel dolorem alterius admittitur." And by the canon law, it is "dictum vel factum alterius famam vel dignita-

"tem

" tem minuens." Sometimes injuries are inferred, not only from expreſs words, but even from the preſumptive meaning of the ſpeakers, as to look in a man's face and ſay, I am not ſuch a lyer as others are; or, to ſay ſtantingly to a clergyman, you are a fine church-man indeed.

What defends againſt the puniſhment due to injurers.

§ 5. Since injuries are eſtimate, according to the deſign of the offender, it follows that men who are fools, idiots, very young, or very drunk, are not puniſhable for verbal injuries, except the offender did become drunk upon deſign to offend: and great paſſion, which breaks off all deſigning, *juſta et non affectata ira*, excuſeth alſo in this caſe. The relating alſo of what we have heard from good authors, who deſign no prejudice, is ſufficient alſo to defend againſt the puniſhment due to injurers.

Real injuries what.

§ 6. Real injuries, according to that foreciled Civilian, are " cum quis pugno pulſatur, fuſtibus cæditur, verbera- " tur,' cumque bona ejus qui nihil debet ut debitoris poſ- " ſidentur cum quis vexandi cauſa, in jus vocatur, aliudve " quid ad invidiam alterius fit vel geritur." Mackenzie, on this title, tells us, real injuries are committed by hindering a man to uſe what is his own, by removing his ſeat out of its place in the church, by giving a man medicaments which may affront him, by arreſting his goods unjuſtly, by wearing, in contempt, what belongs to another man as a mark of honour, by razing ſhamefully a man's hair, or beard, or by offering to ſtrike him in public.

Infamous libels called by Civilians *libelli famoſi*, how puniſhed, and its defences.

§ 7. *Libelli famoſi*; that is, infamous libels are the moſt permanent of all injuries; for the offender in them ſhews more deſign, and therefore are more ſeverely puniſhed; which, with us, is arbitrary, except where the prince is maliciouſly and deſignedly abuſed He who writes, dictates, or affixes infamous libels, or cauſes write, dictate, or affix them, is puniſhable. If the offender was a minor, or was provoked; or if he did tear it before it was fully written, or after it was affixed, confeſſed his fault, and ſaid he only did it out of paſſion; or, if what was ſaid was true, theſe things will leſſen the puniſhment.

Who are judges competent.

§ 8. According to our law, verbal injuries are puniſhed by the commiſſars, except they were committed againſt a magiſtrate: in which caſe, the council or criminal court uſes to amerciate them, eſpecially when he is ſpoken againſt in the exerciſe of his office: but real injuries may be purſued

sued before the council or criminal court. By the civil law verbal injuries are extinguished, if they be not pursued within a year, or by posterior express friendship.

How church judicatures are to behave in processes for calumny.

§ 9. When the complaint consists of some injury done to the complainer, it is fit that the church should endeavour to compose and remove such differences privately; but if the bringing of it before them cannot be got avoided, let it rather be tabled by order of the eldership, than pursued at the instance of the complainer, because thus the thing as scandalous may be more abstractly considered, the person more easily convinced, and the heat of parties prevented. But if parties will enter their own complaint, let them be acquainted, that they are not to expect that the church can civilly punish the injury, but they are to be exhorted to pardon it as to any vindictive humour, and told, that it is only their business to remove the scandal, and gain and please parties, to their edification. And I suppose the calumniator complained of should prove what he alledged against the pursuer, yet even that cannot vindicate him altogether, except the end of his devulging it appeareth really to be his brother's edification: See Durham on Scandal. Upon the whole, where there is no probable ground to expect edification in giving way to such processes, according to that author, it were expedient for the church altogether to wave them.

TITLE VIII.

Of Bribery, Partiality, and Negligence of Judges.

Bribing what.

§ 1. IT is to no purpose to make good canons and constitutions, if the execution of them be not committed to just and diligent persons; as it is to no purpose to have an exact balance, if that balance be not put in a good hand. Bribing is the taking of money or other good deeds, either for doing of justice, or committing of injustice. And if they be taken upon that account, whether by the judges, their wives, children, or servants, the judge is thereby guilty as if done by himself, providing the same be done by his command or ratihabition.

Partial judges who.

§ 2. Judges are partial, when they are moved to act, or forbear, either for fear of angering and disobliging parties, or

or from a design and love to gain their favour. By the act of Assembly 10th August 1648, impartial church procedure is proposed as a general remedy against the growing of sins in the land. And the Assembly 11th June 1697, appoints ministers and members of kirk-sessions impartially to exercise church discipline; and excites them thereunto, by putting them in mind, that in these matters, they have to do with the great and terrible God, whose honour and favour is to be preferred, and whose wrath and anger is to be feared before all other considerations whatsoever. By the 104 act, parl. 7. Jam. V. consulting, or giving partial judgement, or taking of bribes, is declared infamous in any judge. By the 93d act, parl. 6 Jam. VI. the taking of bribes is discharged to the lords of session, their wives and servants, under the pain of infamy and deprivation.

§ 3. By the laws of this and other well governed nations, judges negligent in putting laws to execution, are punishable for their remissness and negligence. And by act of Assembly January 30. 16**, it is enacted, that whatever minister or member of session, be found faulty in neglecting to pursue the scandals therein mentioned, in their stations, the said minister or member of session be complained of, and censured by the presbytery for the first fault, and that the censure be recorded, and that the second negligence be delated to, and censured by the synod; and for the third neglect, they be censured by the synod with suspension from their office, which is to be recorded in the synod register, See book 4. tit. 5.

Negligence of ecclesiastical judges censurable.

TITLE IX.

Of Deforcement of Officers.

§ 1. HOW citations are sometimes appointed to be execute, for preventing of deforcement, see lib. 1. tit. 2. sect. 6. deforcement is that force or violence which opposeth church officers while they are in the execution of the orders and appointments of church judicatures. But if any officer want his orders in writing along with him, the violence offered to him in that case cannot be espoused by church-courts, as an indignity offered to them, otherwise strangers might be emboldened to affront others

Deforcement what.

others, by assuming and pretending their authority Therefore, when any injury is offered or committed against so unexact and negligent church officer, it is only to be resented as if it had been done him when going about his own affairs.

Who are habile witnesses of deforcement.

§ 2 Whoever may be admitted witnesses for proving of other offences may be sustained as witnesses to prove the deforcement, otherwise it may never be proven; but then the witnesses must not be pursuers or complainers, even though they were abused; and if they do depone of any wrong done to themselves, they may be rejected as prejudicate witnesses.

TITLE X.

Of Murder, Paricide, Duels, and Self-Murder.

That these crimes come under church cognizance.

§ 1. AMong the ecclesiastical remedies enacted against profaneness, August 10. 1648, art 5. it is proposed to the consideration of presbyteries, how murder should be censured, in case the magistrate do not his duty in punishing it capitally. And in that form of process, hereto subjoined, enacted by Assembly 1707, cap. 6. art. 1. murder, among diver horrible crimes, is there enumerated as the object of the church's cognizance. It is not improper that church-men understand somewhat of the laws and customs relating to criminal matters, the relevancy and punishment of many crimes being either founded upon or expressed in the word of God, whereof they are the authorised ministerial interpreters. It is true, it may be feared, that church discipline shall have but small success upon obdured or monstrous criminals; yet, it being a mean appointed by Jesus Christ for reclaiming of sinners, it should on that account be tried, and no more neglected than his word and sacraments, which very often have no better effects. This church hath very clearly expressed her opinion about the extent of the object of church discipline, Assem. 1638, sess. 23. 24. art. 13. where they ordain, that discipline in kirk-sessions (for there all processes against church members do first begin) strike, not only upon gross sins, as blood-shed, &c. but against all sins repugnant to the word of God.

§ 2. Civilian

§ 2. Civilians define murder to be the killing man by man, unlawfully; and they divide it into that which is committed casually, in defence, culpably, or wilfully. Casual homicide is, when a man is killed without either the fault or design of the killer, as if an ax head should fall off and kill a by-stander, or a rider should kill with his horse's hinder feet: casual slaughter or homicide then, is that which is occasioned by mistake and just ignorance; for if it proceed from affected ignorance, as for instance, if a man will not know what he may know, his ignorance in that case will not make the murder following upon it to be constructed casual homicide; but if it proceed from gross and *supina ignorantia*, it may be punished by an extraordinary or arbitrary punishment but not by death. It is then necessary, that the committer used all exact diligence to evite the crime, else he is not in the case of casual homicide. Further instances whereof are, if a mason, before he through down stones, advertise all below, tho' in the throwing he kill, he is to be cleared from murder. Or if a hunter shoot at a beast, but a man come in the way and be killed; and yet if either the mason cry not, or if the hunter did shoot in a place where people use to be, he is judged by some lawyers to be guilty of faulty murder. If the committer do what is against the law of nature, or what is criminal; or if what he doth may produce ill consequences and murder, though he designed not the same: in all which cases he ought to be liable, and it seems reasonable, that he who killed, when he was doing what was unlawful, may be arbitrarily punished, though he did exact diligence to shun killing. Murder what, and of casual homicide.

§ 3. *Homicidium necessarium*, or homicide committed in self defence is, when a man being pursued, or reduced to inevitable necessity, has no way left him to evite his own death, but by killing the aggressor: this is in law called *inculpata tutela*, or, *moderamen inculpatæ tutelæ*; within which moderation, if the defender contain himself, he is no way punishable; and so favourable is self-defence, that the exceeder is not liable to the ordinary punishment, but is punishable according to the excess, at the discretion of the judge. This moderation is said to be exceeded in these three, 1st, In arms, as if the aggressor have only a staff, and the defender wound him with a sword or pistol, the defender Homicide committed in self-defence, and how lawful bounds are exceeded.

defender is in that caſe puniſhable. And yet this concluſion is not infalliable; for if the defender was much weaker than the aggreſſor, he might be excuſed to uſe ſuch unequal weapons, according to Mackenzie on this title. 2dly, the defender is ſaid to exceed in time, if he ſtrike the aggreſſor, "antequam ſit in actu proximo occidendi," for elſe it ſhould be lawful to every man, upon the firſt apprehenſion of fear, to kill the aggreſſor. If he threaten to kill, and be one who is known to have any deſign to murder, or be a perſon who uſeth to execute what he threatens; and if he have a ſword, though not drawn, or a piſtol, though not cock'd; if he hath either of theſe, according to the forecited author, he may be lawfully killed, becauſe he is "in actu proximo offendendi;" and yet he thinks the defender may be arbitrarily puniſhed. 3dly, the defender is ſaid to exceed in the meaſure, as if he killed him for wounding, whom he might have ſhunned, or if he followed the aggreſſor. Although much be left to the arbitration of the judge, as to all the three; yet the general rule is, that if the defender exceed only in either of the three, as *v. g.* in the arms or time, the exceſs is ſaid to be "culpa leviſſima:" if in two of theſe, as in time and arms, then it is accounted "culpa levis," and is puniſhable: but if the defender exceed all the three, as in time, arms, and way of proſecution, then it is "culpa lata;" but yet he is not puniſhable as if he had *dolose* murdered, for though it be a rule *in civilibus*, That "culpa lata æ-" quiparatur dolo," yet it is a rule "in criminalibus, that "culpa lata nunquam æquiparatur dolo, ubi agitur de "pœna corporis afflictiva." This exception of ſelf-defence muſt be proponed againſt the relevancy, and muſt be condeſcended upon, thus, the defender or pannel nowiſe acknowledging the killing, yet if he kill'd, it was done in his own defence, in ſo far as the defunct drew a ſword, and thruſt, or offered a piſtol. And though he prove not his exception of ſelf-defence, he will not therefore be condemned, except the purſuer prove the libel. The way of proving this exception of ſelf-defence is ſo favourable, that it may be proved by preſumptions, and by witneſſes, otherwiſe declinable, as couſins, ſervants, and witneſſes who depone only upon credulity.

How ſelf-defence is proponed and proven.

§ 4.

§ 4. *Homicidium culposum*, or faulty slaughter, is, where the murder was not designed, and yet it was committed merely by accident, as if one should hound a dog at another, who should bite him at whom he was hounded, so that he should die thereby, in that and the like case, the offender is not to be punished with death, but arbitrarily, because "aberat animus occidendi." The difference between this and casual homicide, is in this, the committer "versatur in illicito," but not so in the other, yet they both agree in this, that they wanted all design of killing. What is homicidium culposum, or faulty homicide.

§ 5. Wilful murder is committed by fore-thought felony, and if he who intended to kill one, did not by a mistake kill him, but killed another, yet he is to die, because he killed a man designedly. Since the design of killing depends much upon the nature of the wound given, then where the wound was not deadly, the inflictor thereof cannot be punished as a murderer, though the person wounded thereafter die: and though some be of opinion, that if the party live three days after receiving of the wound, the same is thereby presumed not to be mortal: yet generally this is referred to the arbitriment of the judge, who is in this to follow the opinion of physicians, or of one physician, if more were not present: but if they vary, then the judge shall not incline to punish by death, but by an extraordinary punishment. For murder is not to be inferred but from a concluding probation: and if the wound be but small, and a fever follow, then it is presumed that the party died rather of a fever, especially if the person wounded walked a foot for forty days: and seeing ordinarily, wounds that are mortal do kill the receiver in that time, it were therefore not hard to conclude, that he who dies thereafter, dies not of his wounds, if he has walked a foot all that time. Wilful murder what, and what wound is to be judged mortal.

§ 6. Night thieves, robbers, and murderers, may be killed without any punishment, when private persons are warranted to pursue them by sheriffs, justices of the peace, or privy counsellors, and the robber or murderer resists to be apprehended. And by the civil law, it was lawful for a father to kill his own daughter, if he found her committing adultery, and to kill also her adulterer; and if the husband kill the adulterer of his wife, he was only to be punished by some arbitrary pu- Killing of robbers, murderers, and adulterers, how warrantable.

niſhment, but not by death. See the tittle of the Pandects, *de adulter.* But there is no ſuch deciſion yet happened in this country. In the memoirs of the Marquis of Langallery, printed at London this year 1708, p. 85. the following paſſage is related, viz. a citizen of Madrid, finding a Frenchman and his wife on the bed, ſtabbed them both. After the execution, he goes out with his dagger in his hand, ſtained with the blood of theſe two perſons, and preſents himſelf before the judges, who were then upon the bench. The court of juſtice, without any other formality, upon the recital of the action, declared him innocent; this he ſays happened in the year 1700, and the Frenchman was a gentleman of the retinue of the French ambaſſador.

Fighters of duels how puniſhed and cenſured.

§ 7. *Monomachus*, or, the fighter of a ſingle combat, is, "ſingulus qui pugnat cum ſingulo." By the 12th act of the 16th parl. Jam. VI. all ſuch fighters are puniſhable with death, although none of them be killed, and the provoker is to be puniſhed with a more ignominious death than the defender. The giving or accepting challenges to fight, and thoſe who carry them, and the ſeconds of ſuch, may be puniſhed by the council arbitrarily, although combat follow not, becauſe they tend to diſturb the peace. The General Aſſembly by their act 1648, diſcharges duels, and ordains all who ſhall fight them, or make, write, or receive, or with their knowledge carry challenges, or go to the fields, either as principals or ſeconds to fight, the contraveners are to be brought into public twice, once in order to their being rebuked, and again, in order to the profeſſing their repentance; (but the method of cenſuring ſuch now, is to be regulate according to the Form of Proceſs enacted by Aſſembly 1707, of which more hereafter, Book 4.) if the perſon guilty be elder or deacon, he is to be depoſed, and whoſoever ſhall refuſe to ſubmit to the cenſure appointed by the church, ſhall be proceſſed to excommunication. And by cap. 14. art. 32. of the French church-diſcipline, the ſame upon the matter is enacted.

Self-murder how puniſhed, and what defends againſt its puniſhment.

§ 8. Self murder is puniſhed with confiſcation of moveables, and Chriſtian burial is denied them. Furioſity and madneſs ought to defend againſt this puniſhment, even though he hath lucid intervals, ſeeing it is more humane to preſume

preſume he killed himſelf in his madneſs, except it can be proved, that he uſed even in his lucid intervals to wiſh he were dead, or to commend ſelf-murder. An endeavour to kill one's ſelf, is puniſhable by confiſcation, as ſelf-murder. But it may be reaſonably feared, that the inflicting that puniſhment upon it will tempt the poor creature to renew its endeavour with better ſucceſs. Self-murder may likewiſe be committed by omiſſion, as if a man ſhould deſignedly ſtarve himſelf.

Parricide what, and how puniſhed.

§ 9. Parricide is a crime which is committed by killing our parents, or, by the civil law, aſcendents or deſcendents in any degree. By the 220th act, parl. 14. Jam. VI. parricide is puniſhed only in him who kills his father, or mother, good-ſire, or good-dame, and they are ordained to be diſinherited in linea recta.

Murder of children how proven.

§ 10. By the 21ſt act of King William and Queen Mary for preventing the murder of children, it is enacted, that if any woman ſhall conceal her being with child during the whole ſpace, and ſhall not call for, and make uſe of aſſiſtance in the birth, the child being found dead or a-miſſing, the mother ſhall be holden and repute the murderer of her own child, though there be no appearance of bruiſe or wound upon the body of the child.

Abortive potions how puniſhable.

§ 11. The taking of potions to cauſe abortion, after the child was quick, ſhould be capitally puniſhed, though the uſing ſuch means before the "fætus fuit animatus," or to hinder conception, is to be puniſhed arbitrarily. By the 91ſt canon Concilii ſexti in Trullo, it is thus determined, "eas quæ dant abortionem facientia medicamenta, et que "fætus necantia accipiunt, homicidæ pœnis ſubjicimus."

The expoſers of infants how puniſhed, and if they be baſtards.

§ 12. If the expoſed infants do thereby die, the expoſers are as guilty as the takers of abortive potions, eſpecially if the place was ſolitary and remote from ſociety, and where beaſts might devour them: But if they were expoſed where people reſort, and might eaſily be ſeen, theſe who laid them down are only to be puniſhed arbitrarily. Since in this land moſt rarely are children lawfully begotten, ever expoſed, therefore we are not obliged to repute them otherwiſe than unlawfully begotten, ſee Matthæus de crim. expoſ. infant. The pariſh where ſuch children are found, is certainly at firſt, to bear the burden of their maintenance and education.

TITLE XI.

Of Inceſt, Adultery, Bigamy, Rapes, Fornication, et de Venere Monſtroſa.

Inceſt what, its kind, and how puniſhed.

§ 1. INceſt is defined by Civilians, to be, "fæda et nefaria maris et fæminiæ commixtio, contra reverentiam ſanguini debitam;" and they divide it into two kinds, *viz.* That which is againſt the law of nature; of this ſort is all copulation between aſcendants and deſcendants; the other branch, is that which is againſt the municipal law of the country; but our laws does not obſerve this diſtinction: for it is enacted by parl. 1. Jam. VI. act 14. That whoſoever polutes his body with ſuch perſons in degree as God's word doth contain, Levit. xviii ſhall be puniſhed with death. By the act of Aſſembly 1648. ſeſſ. 38 inceſtuous perſons, in caſe the magiſtrate doth not puniſh them capitally, are to make public profeſſion of repentance for the ſpace of fifty-two Sabbaths; but this act is innovate and amended by the 4th act of aſſembly 1705, and the 11th act of Aſſembly 1707.

Adultery what.

§ 2. Adultery is the violation of anothers bed: Hence ſome give its derivation "ad alterius thorum;" and is committed by married perſon's lying with an unmarried, or an unmarried perſon's lying with one who is married. If the woman with whom the adultery is committed was at that time living as a common whore, and the committer was a ſingle man, and knew nothing of her being married, his puniſhment ſhould be moderated on that account; but if the man was married, the crime is the ſame, whether the woman was a whore or not, it being ſtill a violation on his part. And that the lying with a man's betrothed or affidat ſpouſe, may be conſtructed adultery; becauſe he who lies with one who is to be ſhortly married, renders the ſucceſſion as doubtful as he who lies with a married wife.

The difference betwixt ſingle and notour adultery.

§ 3. Notour adultery is by the 74th act of parl. 9. Q. Mary declared to be puniſhable by death, after premonition is made to abſtain from the ſame manifeſt and notour crime. Yet by the explanation of this act given by the 105th act parl. 7 Jam VI. that is only declared to be notour adultery, where, 1ſt, There are bairns anc or mae

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procreated betwixt adulterers. 2dly, When they keep company or bed together notoriously known. 3dly, When they are suspected of adultery, and thereby give slander to the kirk, whereupon being admonished to satisfy the kirk, they contemptuously refuse, and for their refusal are excommunicate. If either of which three degrees be proved before the justices, the committers are punishable by death.

Adultery how punishable.

§ 4. Although there be no express law for inflicting death upon ordinary adulterers, yet Mackenzie, on this title, thinks, that judges are not hindered to inflict the punishment of death upon ordinary adulterers, by any thing expressed in that forecited act Jam. VI. otherwise, it should be an act in prejudice of the law of God, which expressly ordains adulterers to be put to death, Deut. xxii. By Justinian's 134th N. cap 10. the civil law is altered, appointing death to be inflicted upon adulterers. And by the law of most nations, adultery is only punished by pecuniary mulcts. With us notour adultery has been punished with death, and single adultery arbitrarily.

How the church censures adulterers.

§ 5. By the act of Assembly Aug. 5. 1642. all presbyteries are ordained to give up to the Lords of justiciary the names of the adulterers and incestuous persons, witches and sorcerers, within their bounds, that they may be processed and punished according to law. By Assembly 1648, sess. 38. a person being once guilty of adultery, is to make public profession of repentance twenty six Sabbaths in sackcloth; and a relapse in adultery three quarters of a year: but this act is innovate and amended by the forecited act 4 of Assembly 1705. And by that same act 1648, persons guilty of relapse in adultery are to be more summarily excommunicated.

The marriage ought to be proved, and what probation is requisite in adultery.

§ 6. Since adultery is only committed by married persons, it is therefore requisite that the libel in adultery bear, That such persons were married; and except it be proven or be notour to the assize, they should not file the pannel, though copulation be proved. Adultery may be proven by strong and violent presumptions, as the being in bed together alone, and being naked, and the being frequently alone together: likewise gifts, love-letters, close doors, the wife's being abroad all night, the entertaining persons that are known to be pimps, and cohabitation, are all presumptions, upon which it is ordinary for assizes to file pannels, with the assistance of any other probation.

7. By

How she is to be censured who lies with an unknown man.

§ 7. By the 11th act of Assembly 1707, cap. 4. if the woman who hath brought forth the child, doth declare she knoweth not the father, and that she was not forced, whether married or unmarried, the same censure is to be inflicted upon her as in the case of adultery. But if she alledge she was forced in the fields by a person unknown, in that case the former behaviour of the woman should be inquired into, and she seriously dealt with to be ingenuous; and if she hath been of entire fame, she may be put to it to declare the truth, as if she were upon oath, but not without the advice of the presbytery, and no formal oath should be taken.

Bigamy what, and its punishment.

§ 8. In our law a man marrying two wives, or a woman marrying two husbands, commits bigamy: and this is accounted by the 19 act parl. 5. Q. Mary, a breach of the oath made at marriage, and therefore is punishable as perjury, by confiscation of all their moveables, warding of their persons for year and day, and longer during the Queen's will, and as infamous persons never to bruik office, honour, dignity, or benefice, in time coming. It may be doubted if Quakers can be punished as perjurers, seeing they give no oath at marriage, and certainly they should, seeing marriage implies a vow, though no explicite oath be given. It may be doubted also if the two persons marrying be guilty of bigamy *eo ipso* that they marry, though because of some intervening accident they bed not, but seeing by the second marriage they give contrary oaths, certainly they are guilty of perjury: for perjury being the medium peccati in this crime, and not copulatio or coitus, as in adultery. "Reatus contrahitur per contrariæ vota."

A rape what, and its punishment.

§ 9. Rape, or ravishment, is that crime which is committed in the violent carrying away a woman from one place to another, for satisfying the ravisher's lust, and is in the civil law punishable by death, L Un C. de Rap. Virg. &c. The canon law describes it thus: "Est rapina "et violentia quædam, qua mulier de cujus nuptiis nihil "actum est antea, abducitur, invitis parentibus." By the 4th act, parl. 21. James VI. it is declared, That although the consent and declaration of the woman ravished, declaring that she went away of her own free will, may free the committer from capital punishment, yet shall it not free him

him from arbitrary puniſhment; which act inſinuates that the crime with us is otherwiſe capital.

§ 10. Since minors are puniſhable for adultery, much more ought they for a rape; for men in theſe years are more prone and liable to perpetrate ſuch extravagancies than when at a greater age. Though it may ſeem that whores are "infra legum obſervantiam," and ought not to have protection from law who offend againſt it; yet if the whore be now become a penitent, and reconciled to the church, and for a long tract of time hath had a chaſte and laudable converſation, it may be doubted if the raviſher of ſuch a perſon may not be puniſhed "pæna ordinaria." Minors, and ſuch as force common whores, how puniſhable.

§ 11. Fornication is committed by the carnal knowledge of unmarried perſons. The canon law diſtinguiſheth thus: "ſtuprum (ſay they) eſt virginis deſtoratia, et illicitus cum "vidua concubitus." That law commands ſuch abuſers of virgins to marry them, the parents conſenting thereto; and if they refuſe to do ſo, his body is to be chaſtiſed, and himſelf excommunicated. But if the father of the corrupted virgin will not beſtow her upon him in marriage, then the man is obliged to give her ſuch a dowry as virgins of her degree and quality uſe to get. That ſame law ſays, ſimple fornication is "concubitus ſoluti cum ſoluta et im-"pudica," the puniſhment whereof is left unto the judge's diſcretion. That there ſhould be a diſtinction of puniſhment inflicted upon the deflowerers of virgins, and abuſers of honeſt widows, from theſe who abuſe themſelves with ſuch women who have ſinned ſo already, is very reaſonable. By the act of Aſſembly Auguſt 10. 1648, fornicators are to make profeſſion of their repentence three ſeveral Sabbaths; who is guilty of a relapſe therein, ſix Sabbaths; who is guilty of a trilapſe, twenty-ſix Sabbaths; and of a quadrilapſe, three quarters of a year, all in ſackcloth, and are firſt to appear before the presbytery, confeſſing their ſin there, before they be admitted to public profeſſion of repentence for it; but this act is reformed and amended by the Form of Proceſs. By cap. 38. ſeſſ. 1. Car. II. fornication is finable in 400 l. to noblemen, 200 l. the baron, 100 l. the gentleman and burgeſs, and 10 l. every inferior perſon; and that the pain be doubled *toties quoties*, and to be levied off the man as well as the woman, to be applied to pious uſes: but if fornicators be inſol- Fornication, what, and how puniſhed and cenſured.

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vent, they are to be punished corporally, according to the 13th act, parl. 1. James VI.

What defends against the punishment.

§ 12. Although the subsequent marriage of fornicators may defend them from civil punishment, and likewise legitimates the children begotten before marriage, according to the present practice, yet the church doth not judge the scandal given to be thereby removed; and therefore, by their act 11th June 1646, they appoint all married persons, under public scandal of fornication before marriage, although the scandal thereof hath not appeared before marriage to satisfy publicly therefor, their being in the state of marriage notwithstanding, and in the same manner they should have done if they were not married.

Venus montrosa, how punished.

§ 13. According to Mattheus de Criminibus, "Monstrosa Venus est quæcunque vel virum vel fœminam "mencitur." With us the confession of sodomy itself without any other adminicles, is sufficient to infer the punishment of death, except the confessor be known, or at least suspected to be distempered. Bestiality is likewise punishable with death; and the endeavour is as highly punishable, if the delinquent was only hindered by others. In both these crimes witnesses who are liable to exceptions will be received, because of the attrocity of the crime, as some authors think; see Mackenzie on this title. We have reason to bless God that these crimes are rarely committed, and some of them not so much as known in this land; and therefore never any particular statute against them hath yet been made: but our libels against them bear, that altho' by the law of the Omnipotent God, as it is declared Levit. xx. as well the man who lieth with mankind, as the man who lieth with a beast, be punishable with death, &c. The ordinary punishment in both these is burning, and the beast is also burnt or drowned with which the bestiality was committed; partly for the preventing of monstrous births, and partly to blot out the memory of so loathsome a crime.

TITLE

TITLE XII.

Of Penny-Bridals, Promiscuous Dancing, Stage-Plays, Immodesty of Apparel, Drunkenness, Tippling, and Acts in general against Profaneness.

§ 1. PEnny-weddings are neither by our civil nor ecclesiastical constitutions absolutely discharged, for that were to deprive the poorer sort of the satisfaction of meeting with their friends on that occasion. But our Assembly, considering that many persons do invite to these penny-weddings excessive numbers, among whom there frequently falls out drunkenness and uncleanness, for preventing whereof, by their act February 13th 1645, they ordain presbyteries to take special care for restraining the abuses ordinarily committed at these occasions, as they shall think fit, and to take a strict account of the obedience of every session to their orders thereanent, and that at their visitation of parishes within their bounds; which act is ratified March 8. 1701. And by the 12th sess. Assembly 1706, presbyteries are to apply to magistrates for executing the laws relating to penny-bridals, and the commission, upon application from them, are to apply to the government for obliging the judges, who refuse, to execute their office in that matter. By the 14th act, parl. 3. Car. II. it is ordained, that at marriages, besides the married persons, their parents, brothers, and sisters, and the family wherein they live, there shall not be present above four friends on either side. And if there shall be any greater number of persons at penny-weddings, within a town, or two miles thereof, that the master of the house shall be fined in the sum of 500 merks. Penny-weddings, how restrained.

§ 2. The General Assembly, by their act July 19th 1649, finding that scandal and abuse rises from promiscuous dancing, do therefore discharge the same; the censure thereof is referred to the several presbyteries, which is ratified March 8. 1701. By the church discipline of France, cap. 14. art. 27. these who make account to dance, or are present at dancing, after having been several times admonished, shall be excommunicated upon their growing obstinate Promiscuous dancing censurable.

and rebellious, and all church judicatures are to see this act put to execution. By the 59d canon concilii Laodiceni, "Non oportet Christianos ad nuptias venientes ballare vel "saltare, sed modeste cænare vel prandere, ut decet Chri- "stianos."

Stage-plays, &c. condemned.

§ 3. By the 28th art. of the forecited cap. of the French church discipline, Christian magistrates are exhorted not to tolerate hocus pocus, and slight-of-hand plays, nor puppet and stage players, neither shall it be lawful for believers to assist at comedies or tragedies, and such other plays, acted in public or private, seeing that in all ages they have been prohibited among Christians, as tending to the corrupting of good manners. Nevertheless, when in colleges it shall be thought fit that youth may represent some history, it may be tolerated, providing it be not contained in the holy scriptures, and done very seldom, and even then by advice of the colloquy, which shall first be satisfied with the composition. In the third book of the Digests, tit. 2. de his qui notantur infamia, book. 2. § 5. sub fin. "Eos enim qui quæstus causa in certamina descendunt, et "omnes propter præmium in scænam prodeuntes, famo- "sos esse."

Immodesty of apparel condemned.

§ 4. By the 25th art. of the above-cited cap of the French church discipline, the churches shall advertise believers to use great modesty in apparel, and shall give order to abate the superfluity therein committed. Nevertheless the churches shall make no law thereabout, the making of such appertaining to the magistrate. And by art. 26. all persons who wear habits to have open marks of dissoluteness, shame, and two much newness, as painting, naked breasts, and the like, the consistory shall use all possible means to suppress such badges of immodesty by censures. All obscene pictures, which are apt to dispose and incite to unclean thoughts and desires, are most improper furniture for the houses of Christians, and therefore the users of them may fall under church censure, if they be not removed.

Means and considerations for preventing drunkenness.

§ 5. Temperance is the golden mids between abstinence and intemperance; for attaining whereof, when we are sufficiently strengthened and refreshed with our ordinary diets, we should abstain betwixt them, and if we will not suffer ourselves to be thus rationally bounded, I cannot see how we can otherwise eschew the evil of being temped to excess

exceſs in drinking, bot from the ſpecious pretences and ſolicitations of our own voluptuous tempers, and the enticement and example of others; and if we tranſgreſs the bound above propoſed, we cannot but fall into temptation: for Card. Bona, de vitæ Chriſtianæ principiis, ſaith, "ſæpe "neſcimus utrum ſubſidium petat inevitabilis corporis cu- "ra, an fallacia concupiſcentiæ nos decipiat, et in hac in- "certitudine hilareſcit infelix anima, ut ſalutis obtentu in- "temperantiam excuſet." Our law ſeems to approve and appoint this manner of bounding, for the 20th act, parl. 22. Jam. VI. diſchargeth all haunting of taverns and ale-houſes after ten hours at night, or any time of the day, excepting time of travel, or for ordinary refreſhments, under the pain of being puniſhed as drunkards. And therefore, if one accuſed for drunkenneſs deny the ſame, or impute the ſigns and effects thereof proven againſt him to other cauſes, as ſickneſs of the ſtomach, giddineſs of the head, or the like, theſe defences, though they may be true, yet are not relevant to defend the accuſed againſt the puniſhment of drunkenneſs, providing his tippling be proven by the unſeaſonable haunting of taverns; and it needs not be thought hard that no diſtinction is made betwixt drunkenneſs and tippling, ſeeing it is a common obſervation, that tipplers are harder to be reclaimed than drunkards themſelves.

Tippling puniſhable, as drunkenneſs.

§ 6. Among the remedies propoſed againſt the corruption of the miniſtry, by Aſſembly 13th June 1646, act 11. miniſters are not only to forbear drinking of healths, called Satan's ſnare, leading to exceſs, but likewiſe to reprove it in others, and the following act of parliament, puniſhing the ſin of drunkenneſs, doth appoint exceſſive drinking, eſpecially under the name of healths, to be puniſhed. The act I mean is 19th, ſeſſ 1 parl. 1 Car. II which enacts, that who drinks to exceſs, or haunts taverns, as above, ſhall pay, the nobleman 20 l. the baron 20 merks, the gentleman, heretor, or burgeſs, 10 merks, the yeoman 40 ſhill. and the ſervant 20 ſhill. *totie quoties*, and the miniſter the fifth part of his ſtipend: which fines are to be applied as the fines for other immoralities, and the inſolvent are to be puniſhed in their perſons.

Drinking of healths a ſnare, drunkenneſs how puniſhed.

§ 7. Such as commit crimes in their drink, are ſometimes, for want of deſign and malice, more meekly puniſhed than others, eſpecially if they were cheated, upon deſign, into

If such as are drunk be punishable for crimes, and can contract.

that condition by others. And in this case, the law distinguisheth inter ebrios, who are rarely drunk, and ebriosos, who are habitually such; for these last should be most severely punished, both for their drunkenness, and the crimes occasioned by it. And such as make themselves drunk, upon design to excuse or lessen thereby the sin they are to commit, merit no favour; and such as know they are subject to extravagancies in their drink, merit as little. Persons that are incapable and stupid through drink, the law not only forbids people to contract with them, but makes all contracts then made reducible on that head. The law is so far from countenancing fraud, that it repairs the injured against it See Stair's Instit. p. 98. and 60 .

Presbyteries may appoint informers against vice, and how judges refusing to punish the same are liable.

§ 8. By the 40th act. sess 4. parl. King William and Queen Mary, presbyteries are ordained to appoint informers against and prosecutors of profane persons, within their bounds, before the civil magistrate. And by the 13th act of the following session of that parliament, all magistrates are strictly required to execute the laws against profaneness at all times, and against all persons, whether officers, soldiers, or others, without exception. And if any of these judges shall refuse or delay to put the said laws to execution upon application from minister, kirk-session, or any in their name, giving information, and offering sufficient probation against the offender, that every one of the judges so refusing or neglecting, shall, *toties quoties*, be subject and liable to a fine of an hundred pounds, to be applied for the use of the poor of the parish where the scandal was committed: declaring hereby, that any for the kirk-session or minister, having their warrant, may pursue any of these negligent judges before the Lords of session, who are ordained to proceed summarily; and that it shall be a sufficient probation of the judges refusal, if the pursuer instruct, by an instrument under a notary's hand, and witnesses thereto subscribing, and deponing thereupon, that he made application to the said judge, unless the judge so pursued, condescend and instruct, that within the space of ten days after the said application, he gave orders to cite the party complained on, within the space of ten days, and at the day of compearance, he was ready to have taken cognition of the scandal complained on, and instruct and condescend on a relevant reason why the laws were

were not put in execution. By the 31ſt act, ſeſſ. 6. of K. William's parl. it is ordained, that in every pariſh, where any of the ordinary inferior judges happen to reſide, they ſhall execute the laws againſt profaneneſs, and mocking religion and the exerciſe thereof, at the inſtance of any perſon whatſoever who ſhall purſue the ſame; certifying them, if they fail therein, either by themſelves, or their deputes, the Lords of ſeſſion will appoint judges in that part. And in other pariſhes where no ſuch magiſtrates do reſide, it is ordained, that the foreſaid perſons ſhall appoint deputes for the ſaid pariſhes, with the power and for the end foreſaid, ſuch as ſhall be named to them by the heritors and kirk-ſeſſion thereof. But really, it is foreign to members of a kirk-ſeſſion, conſidered as ſuch, to chuſe or preſent a civil magiſtrate, even as it is to a civil court, as ſuch, to chuſe or preſent the members of a kirk-ſeſſion. And farther, they diſcharge advocation, ſimpliciter, of proceſſes, againſt immorality from theſe pariſh judges; and likewiſe, all ſuſpenſions of their ſentences, without conſignation or liquidate diſcharges. It is alſo ordained, that in caſe of calumnious ſuſpending, the Lords of ſeſſion decern a third part more than is decerned, for expences; and likewiſe, they appoint the fines to be inſtantly paid in to the pariſh collector for the poor, or the party impriſoned till ſufficient caution be found for payment of the ſame, or otherwiſe to be exemplarly puniſhed in his perſon in caſe of inability. It is alſo enacted, that no pretence of different perſuaſion in matters of religion, ſhall exeem the delinquent from being cenſured and puniſhed for ſuch immoralities, as by the laws of this kingdom are declared to be puniſhable by fining. And it is recommended to the privy council, to take further effectual courſe againſt profaneneſs, and for encouraging of ſuch as ſhall execute the laws againſt it.

Pariſh magiſtrates for puniſhing vice, their ſentences not to be advocate or ſuſpended.

Difference in religion exeems not from church cenſure.

§ 9. By the acts of Aſſembly for ſuppreſſing profaneneſs, they appoint as follows: That church judicatures execute diſcipline faithfully againſt all ſcandalous converſation, and in particular, againſt drunkenneſs and ſwearing, but with that gravity, prudence, and meekneſs of wiſdom, as may prove moſt effectual for reclaiming them. And miniſters are to be free with perſons of quality for amending of their faults; and if it be found needful, preſbyteries

Diſcipline to be faithfully exerciſed, and how the quality is to be admoniſhed.

byteries are to appoint some of their number to concur with the minister in admonishing such. Masters of families are to receive no servants, but such as have testimonials of their honest behaviour; and none ought to get testimonials, but such as are free of scolding, swearing, and such like more common sins, as well as fornication, adultery, drunkenness, and other heinous gross evils And the ordinary time of giving testimonials is to be in face of session; but if an extraordinary exigent happen, let it be given by the minister, with consent of the elder of the quarter. If they have fallen, or relapsed into scandalous sins, let their testimonials bear both their fall and repentance; but it were more charitable, that the scandal were suppressed, and remembered no more. And persons of quality removing to Edinburgh, or elsewhere, with their families and followers, if they carry not testimonials along with them, the minister from whom they remove, shall advertise the minister to whom they come, if to his knowledge they be lying under any scandal It is recommended to ministers, presbyteries, and sessions to meet together for private fasting and prayer, and conference about the state of the church, with respect to the growth and decay of godliness, and success of the gospel; and in these days the presbyteries ought to pass their privy censures, and both synods and they are exhorted to perform them with more accuracy, diligence, and zeal. It is appointed, that ministers be frequent in private personal conference with those of their charge, about the state of their souls And presbyteries are to take special notice of ministers, who do converse frequently and ordinarily with malignants, and with scandalous and profane persons, especially such as belong to other parishes. Whereas men of business for their too late sitting in taverns, especially on Saturdays night, do pretend relaxation of their minds; therefore it is recommended to ministers, where such sinful customs are, to represent the evil thereof both publicly and privately, and call such to redeem that time, which they have from business, and employ the same in conversing with God. It is appointed likewise, that carriers and travellers bring testimonials from the places where they rested on these Lord's days wherein they were from home, to their own ministers. An abstract of all acts of Assemblies against profaneness is to be got and printed; and also

Who grant and use testimonials, their contents.

Sessions and presbyteries are to keep days for prayer, and pass privy censure duly, and ministers to be frequent in converse.

Men of business not to be excused for tarrying late in taverns, and carriers must have testimonials.

Abstracts of acts of parliament and as-

ſo it is overtured, that an abſtract of all acts of parliament againſt the ſame be gotten. And each preſbytery is to hear the ſame read twice a year, at two diets to be appointed for that effect. And it is likewiſe recommended to preſbyteries, to prepare overtures to General Aſſemblies, that they being found proper means for curbing of vice, may by them be enacted. It is appointed, that perſons groſsly ignorant be debared from the communion; for the firſt and ſecond time ſuppreſſing their names; for the third time expreſſing their names; and for the fourth time let them be brought to public repentance: this is to be underſtood of thoſe that profit nothing, nor labour for knowledge; for if they be labouring to profit, they ought, by the act of Aſſembly, to be treated with more forbearance. All which means for ſuppreſſing of profanity are enacted by Aſſemblies Auguſt 10. 1648. April 14. 1694, January 24. 1698, January 30. 1699.

ſembly againſt vice to be got.

Groſs ignorance how to be cenſured.

TITLE XIII.

Of Theft, Sacrilege, Uſury, Falſehood, Beggars and Vagabonds.

§ 1. THeft is deſcribed by lawyers to be "fraudulo- "ſa contrectatio, lucri faciendi gratia, vel "ipſius rei, vel etiam uſus ejus poſſeſſionisve, quod lege "naturali prohibitum eſt." By the word *contrectatio*, they underſtand, not only the away-taking of a thing; for theft is committed not only by concealing what was taken from another, but likewiſe the uſing a thing depoſited or impignorate to other ends and uſes than was agreed upon. When one is urged by neceſſity, not from a deſire to gain, to take food or raiment from the owners thereof, without their conſent, he is not to be deſpiſed, but rather pitied and pardoned, Prov vi. 30. By the 83d act, parl. 11. Jam. VI. it is ſtatute, that whoſoever deſtroys plough, or plough-graith, in time of tilling, or wilfully deſtroys the corns, ſhall be puniſhed therefor by the juſtices to the death as thieves; but our practice in this is a little arbitrary and uncertain. By the 26th act, ſeſſ. 1. parl. 1. Car. II. it is appointed, that the perſons from whom goods are ſtollen, purſuing the thief, uſque ad ſententiam, ſhall have

Theft what, how puniſhed, and when excuſable.

How ſtollen goods are to be recovered.

have his own goods again, where-ever they can be had, or the value; and he is to have his expences of profecuting the thief, out of the readieft of the thief's goods.

Sacrilege what, and how punifhed

§ 2. Sacrilegus dicitur qui facra legit. By the canon law, facrilege is committed, either properly, when a thing facred is taken out of a facred place; or lefs properly, when a facred thing is taken out of a profane place, or when a profane thing is taken out of a facred place: This crime is likewife committed when facred things are imbezzled. Though with us, there be no formal confecrations of churches, veftments, cups, &c. yet to fteal any thing deftinate to God's fervice, or even to fteal any thing out of a church, ought to be looked on as an aggravation of the crime of theft.

Ufury what, its feveral branches, how it is proven and punifhed.

§ 3. The taking of more annualrent than the quota ftated by law, is the firft branch of ufury; the fecond is, to take annualrents before the term of payment; the third is, to take wadfets in defraud of the law; by doing this, they do not take more annualrent directly than what is prefcribed by the law, but they take wadfets of land from the debtor for more than their annualrents can extend to, and then they fet back-tacks to him for payment of what is agreed upon. The fourth branch of ufury with us, is, to take bud or bribe for the loan of money, or for continuing it. But it were againft reafon, that by lending money to my friend, I fhould become incapable of a donation from him. By the act 7. parl. 16. Jam. VI. it is appointed, that ufury fhall be proved by the oath of the party receiver, of the unlawful annualrent, and witneffes infert, without receiving the oath of the giver of the ufury, for eviting perjury. The pain of ufury with us, is, that the debtor fhall be free from his obligation, or have back his pledge; or if the debtor conceal, then the revealer fhall have right to the fums, act 222. parl. 14. Jam. VI. and by the 248 act, parl. 15. Jam. VI. it is appointed, that the ufury bond or contract fhall be reduced; and being reduced, the fum fhall belong to his Majefty or his donators, and the party to have repetition of the unlawful annualrent paid by him, in cafe only he concur with the donator in the reduction. Ufury is called crimen utriufque fori, and how miniflers are to be cenfured for it, See book. 4. tit. 5.

Falfehood what.

§ 4. Falfehood is a fraudulent fuppreffion, or imitation of truth, in prejudice of another. This defcription of crimen

falfi

falſi, or falſitas, doth agree with that given by the Canoniſts, *viz* " Eſt fraudelenta ſive doloſa veritatis imitatio, vel " occultatio " This crime is committed in writ, either by producing a falſe writ, if they knew it to be falſe, and abide by it, or by fabricating a falſe writ. Again, it is committed by omiſſion, in a notary's not ſetting down what he was required to inſert in his inſtrument, or the omitting to expreſs the day and place, when the omitting thereof might have been diſadvantageous. By the 22d act, parl. 23. Jam. VI. the makers or uſers of falſe writs, or acceſſory to the making thereof, are to be puniſhed with the pains of falſehood; and the counterfeiter, falſifier, or acceſſory, cannot, by paſſing from the writ quarrelled, free himſelf from the puniſhment. The puniſhment of forgery is declared, by act 22. parl. 5. Q. Mary, to be proſcription, diſmembring of the hand or tongue, and other pains of the canon or civil law. The ſecond ſpecies of falſehood is, that which is committed by witneſſes in their depoſitions, by taking money to depone or not depone; by concealing the truth, or expreſſing more than the truth, though they received no money. And, thirdly, by deponing things expreſsly contradictory; but in this caſe, the contradiction muſt be palpable, and not conſequential, " Nam omnis in- " terpretatio præferenda eſt ut dicta teſtium reconcilien- " tur " By cap. 46. parl. 6. Queen Mary, falſe witneſſes, and their inducers, are to be puniſhed by piercing their tongues, eſcheat of moveables, and infamy, and farther at the judge's diſcretion. Perjury differs not much herefrom, for it is defined by lawyers to be a lie affirmed judicially upon oath, and it is puniſhable by confiſcation of all their moveable goods, warding of their perſons for year and day, and longer during the Queen's will, and that, as infamous perſons, they ſhall never be able to bruik office, honour, dignity, nor benefice in time coming. For this ſee the 19th act, parl. 5. Queen Mary. There is a third ſpecies of falſehood committed by forging true money, without authority, by coining falſe money, or by mixing and allaying worſer with nobler metals in current coins, or by venting and paſſing the adulterate money coined by others, or entertaining the forgers, or being art and part with theſe coiners. This crime is commonly puniſhed by death. The fourth ſpecies of falſehood is committed by uſing of falſe weights and

Falſehood in writ.

Falſehood committed by witneſſes.

Perjury what, and how puniſhed.

Forging of money, how puniſhed.

False weights their punishment.

measures. By the 19th parl. act 2. Jam. VI. the users of false weights and measures, are to tine their haill goods and gear. Having of false weights in the shop presumes using, except this presumption be taken off, by alledging that the weights are presently bought or borrowed, or laid aside as light.

Assuming of a false name, how punished.

Falsehood is also committed by assuming a false name, and by presenting one person for another at the subscribing of papers: for such impostors the punishment of death hath been inflicted. Decemb. 12. 1611, mentioned by Mackenzie on this title.

Beggars and vagabonds how suppressed and punished.

§ 5. By the 22d act, parl. 4. Jam. V. no beggar born in one parish is to be allowed to beg in another, and badges are to be made by the headsmen of each parish for that effect; which law agrees with those of other nations, see Matth. de crim. de improba mendicitate. And by book 11. title 25. of the Codex de validis mendicantibus, they are distinguished from the poor, and punished as we do sturdy beggars and vagabonds. Car. II. parl. 1. sess. 3. cap 10. it is ordained, that all masters of manufactories, may, with advice of the magistrates of the place, seize vagabonds, and idle poor persons, and employ them in their work, and exact off the parishes where they were born, or if not known, the parishes where they have haunted for three years before, two shillings per diem, in manner prescribed in the act, and thereafter may retain them in their service for seven years for meat and cloaths. Sturdy beggars and vagabonds should be proceeded against by the sheriffs, and other judges, and they may exact caution of them: but if they find none, they should be denounced fugitives, and they may be sent to public work-houses, or correction-houses, or put in the stocks; and if they be reset after they are denounced fugitives, their resetters are liable for the perjudice sustained, and the parties damnified will have action against the magistrates within whose bounds these vagabonds are willingly reset. See Jam. VI. parl. 1. cap. 97. and parl 11. cap. 97. parl. 12. cap. 124. 144. 147. and parl. 15. cap. 268. and Car. II. parl. 2. sess 3. cap. 18. By the act of the General Assembly September 1. 1647, it is recommended to presbyteries, to consider of the best remedies, for preventing abuses committed by beggars living in great vileness, and many of their children wanting baptism.

TITLE

TITLE XIV.

Of Art and Part.

§ 1. THESE who are assisters by counsel or otherwise, are in our law said to be art and part of the crime. By art is meant, that the crime was contrived by their art and skill, *eorum arte*; by part is meant, that they were sharers in the crime committed, when it was committed, *et quorum pars magna*. The Civilians used, in place of art and part, *ope et consilio*; by our law such assisters are called complices. Art and part explained.

§ 2. By the 151st act, parl. 11. James VI. it is ordained, that nothing can be objected against the relevancy of that part of the summons, which bears, that the persons complained upon are art and part of the crimes libelled: but the judge here is to consider, whether the adviser gave the counsel upon the account of former malice conceived by himself; or if it was only given in resentment of any wrong done to the committer, and is to be more severely punished in the first case than in the last. 2dly, In the case of advice, the adviser's age is much to be considered; for though minors, and those who are drunk, may be punished for murder, yet it were hard to punish them for advice. 3dly, The words in which the advice was conceived should still be interpreted most favourably for the adviser; for words are capable of several and distinct senses, as they are understood by the respective speakers, and they vary by the very accent or punctation. 4thly, If the adviser retracted his opinion, he ought not to be punished with the ordinary punishment, if he thereafter and instantly intimated to the person against whom the advice was given, what danger he was in, and also dissuaded the committer from following the advice given. How far advice imports accession.

§ 3. He who allowed his house to the adulterers, for perpetrating that crime, or for consulting about the committing thereof, is certainly punishable, though it was not committed. He who retains his wife, after he found her committing adultery, and lets go the adulterer, is punishable as a leno, pimp, or baud, providing he take money to conceal the adultery, "Nam lenocinium est, ubi maritus Who are punishable as accessories in adultery. What is lenocinium.

" tus quæſtum facit de corpore uxoris." He who gives warrant and order, or hires others to commit adultery, deſerves the ſame puniſhment with the adulterer, and in effect he is moſt guilty, ſeeing he wants the natural temptation of the adulterer, and commits the crime in contempt of the law

Panders, &c. and innkeepers how puniſhable for whoredom and drunkenneſs.

§ 4. Panders, pimps and bauds, making gain of the whoredom of others by their help and advice, deſerve ſevere puniſhment as acceſſories to their wickedneſs. As likewiſe, the keepers of taverns and alehouſes, who furniſh their gueſts with liquors unto drunkenneſs, or ſell thoſe liquors at unlawful times, or to drunkards, are to be puniſhed themſelves, as drunkards, according to the inſtructions given to the juſtices of the peace in the 19th act parl. 1. ſeſſ. 1. Car. II. And there ſeems to be good reaſon for it, ſeeing the beſt of druggs given to exceſs, either as to quantity or quality, and whatever overpowers our nature, is poiſonable.

BOOK

BOOK IV.

TITLE I.

Of Scandals and Church-discipline in general. Of the Method of proceeding with the Scandalous, and how Scandals are to be tabled before Church-judicatures.

Scandal what.

§ 1. WE are not here to understand by scandal, a thing actually displeasing the party offended; nor is it always to be judged by the matter, seeing offence in lawful matter may be taken, where it is not given; as in that eating and drinking mentioned Rom. xiv. Or in taking wages for preaching the gospel, 1. Cor. ix. Neither is it the pleasing of men that doth always edify them, nor the displeasing of them that doth stumble or scandalize them; but scandal is something accompanying word or dead, with such circumstances as maketh that word or deed inductive to sin, or impeditive of the spiritual life, or comfort of others.

When offences are to be brought to public, and when not.

§ 2. Church discipline serves chiefly to curb and restrain the more peccant humours of professors, and therefore sins of infirmity, strictly so called, which are not in themselves so scandalous to others, should not be any part of the object thereof, otherwise its exercise might prove more molesting and offensive than edifying and sanative. Again, offences from disputable practices, or things indifferent, are not properly the object of church censure, because there is not a solid ground therefrom for thorough conviction of the party. Further, offences which the church may find cannot be proven, ought not to be prosecute, for thus her authority is much weakened, and neither is the offender edified. In the last place, though some gross scandals (which are not public or flagrant) may be proven by two or three witnesses, (especially if it be against a person otherwise orderly) yet he is not therefore to be cited to appear in public, except upon supposition of his obstinancy to acknowledge

ledge the offence to thoſe who knew and were offended therewith; which method is agreeable to that of Chriſt's preſcribing, Matth. xviii. for the removal of private offence. But, on the other hand, ſcandal ſhould be taken public notice of, when they are of their own nature groſs and infectious; next, when the offence becometh public, though at firſt it was not ſo, and when it is accompanied with contempt of private admonition, or with frequent relapſes therein.

The ends and uſe of church diſcipline.

§ 3. Church diſcipline and cenſures are for vindicating the honour of Chriſt, that ſuffers in the miſcarriage of any member: again, they are inflicted on the church's account for preſerving of her authority, diſcipline being as the eccleſiaſtical whip for that end, and for preſerving her from corruption by the ſpreading of the leaven of profanity. Another end of church diſcipline is for the offender's good, that they may be aſhamed to the deſtruction of the fleſh, and ſaving of the ſpirit in the day of the Lord Jeſus, 1 Cor. v. 5. act 11. Aſſem. 1707. cap. 1. ſect. 3.

Offences of the ſame kind, not to be always managed after the ſame manner.

§ 4. The ſame offences upon the matter are not to be proſecute at all times, nor againſt all perſons, and in all places, in the ſame manner: thus we ſee the Apoſtle Paul in ſome caſes cenſuring corrupt men, as Hymeneus and Philetus, 1 Tim. i. 20. ſometimes he threateneth, and yet ſpareth, although the ſcandal did merit cenſure, Gal. v. 12. he ſaith, I wiſh they were cut off that trouble you; yet he cuts them not then off, becauſe he found not the preſent circumſtances of the church to require it. See alſo 2 Cor. x. 6. where he ſaith, having in a readineſs to revenge all diſobedience, when your obedience is fulfilled; therefore it ought not always to be accounted partiality, when ſuch differences in church procedure are obſerved; providing nothing be done with reſpect of perſons, on civil or natural accounts: and alſo, providing the difference be rather in the manner and circumſtances of proceeding againſt ſome offences, (eſpecially if they be ſuch where no rule how to proceed againſt them is fixed,) than in diſpenſing with what ſeemeth to be material.

The order preſcribed, Matth. xviii. to be obſerved, and what it implies.

§ 5. The order preſcribed by our Lord Jeſus Chriſt, Matth. xviii. for repairing and proſecuting of private offences, implies, 1ſt, That whether they be in leſſer particulars, or in greater, yet if known to but a few, they are

are not inſtantly to be brought to public, (except ſome circumſtance neceſſitate the ſame for greater edification) which order ought to be obſerved by miniſters, elders, and private perſons, act 11. Aſſem. 1707, cap 2. ſect. 1. It implies further, that when the perſon offending doth accept of a private admonition, there is then no more mention to be made thereof. Again, if that private admonition prevail not, then the perſon offended is purpoſely and ſeriouſly to take two or three with him, for the further reclaiming and admonition of the offender, before it come to the church, which may be fitly done at miniſterial viſitation of families. Moreover, it implies, if this hath not the deſired effect, then is the offence to be delated unto the church-ſeſſion; and when it is brought there, it were fit, that ſome who had been witneſſes to the private admonition, were brought with the parties, to inform the judicatory, and inſtruct that the offender hath been ſeriouſly admoniſhed in private, but without ſucceſs: therefore it is convenient that the witneſſes to the private admonition be members of the ſeſſion. In the laſt place, we may draw from this order, that if the ſeſſional admonition have weight with the offender, ſo as to reclaim him, and ſatify thoſe he had ſcandalized, there is no need for rebuking him before the congregation, except the forbearing a congregational rebuke may hazard the infection of others, and encourage them to follow the offender's practice.

When a perſon is to be accounted obſtinate.

§ 6. One is obſtinate when he doth refuſe either to hear private admonition, or doth decline to appear and anſwer before church judicatures, after a third citation, either perſonally apprehended, or a copy thereof left at his dwelling houſe: but one citation given, apud acta, is peremptory, and diſobedience thereunto may infer contumacy likewiſe, act 11. Aſſem. 1707, cap. 2. ſect. 4. 5. In the next place, it is contempt in one, when appearing, to juſtify his offence, or deny it when evidently proven. It is alſo contempt, when one acknowledges his offence, but with a proud and inſolent behaviour; or, who uſeth haughty, reflecting, or irreverent expreſſions. Such an offender doth thereby vilify the ordinance of Chriſt more than if he had made no compearance at all. Laſtly, it may be conſtructed a not hearing of the church, when one

continues

continues to commit the same sins, notwithstanding of his serious-like penitence for the same.

What satisfying, and what not, for removing of scandal.

§ 7. Every verbal acknowledgement and promise of amendment, ought not always to be so satisfying as to sist process; for notwithstanding of all that, the offender's gesture when compearing, his expressions elsewhere, and his common walk and conversation, may convince the judicatory that he is but a mocker; on the other hand, church officers ought not to delay the removing of an offence, till they be satisfyed that the offender is sincerely and graciously penitent, for that would engage church judicatures to decide as to the state of some souls, which is bold for them judicially to dive into, and when all is done impossible to arrive at any certainty about it. It is to be noticed, that in church-discipline a difference is to be made between what is satisfactory unto a church judicature, so as to admit the offender unto all church privileges, as if the offence had never been; and what may be satisfying, so as to sist procedure for the time. Upon Simon Magus his confession, Acts viii. 24. it is probable, that as he then did thereby prevent excommunication; so upon it, it is not probable that he was thereupon immediately admitted into church communion. There is requisite then in the offender, who intendeth to have access to church privileges, a sober, serious acknowledgement of the offence, with the expression of an unfeigned-like purpose to walk inoffensively, and especially to watch against relapses; and if there appear no ground for hindering the judicature to esteem the offender one, who purposeth as he expresseth, they should accept of his expressions as satisfactory.

Who are to be admitted to public repentance, and when to be absolved.

§ 8. By the act of Assembly 1596, ratified 1638, it is appointed, that none falling into public slanders be received into the fellowship of the kirk, except the minister have some appearance and warrant in conscience, that he hath both a feeling of sin and apprehension of mercy, and for this effect that the minister travel with him in doctrine, and in private instruction, to bring him hereto, and especially in the doctrine of repentance; which being neglected, the public place of repentance is turned into a mock. By the 4th act of Assembly 1705, they do appoint and ordain (with respect to scandals, the grossness whereof makes it necessary to bring the persons guilty oftner than once be-

fo-

fore the congregation,) that after such persons are convict before the session, it be judicially declared unto them, that they have rendered themselves incapable of communion with the people of God in sealing ordinances, and that they be appointed to appear in public to be rebuked for their sin, whether they appear penitent or not, conform to the divine institution, 1 Tim. v. 20. And it is referred to the respective church judicatures concerned, to determine how often such delinquents shall appear in public; and they ordain, that after a public rebuke, the minister and elders be at further pains in instructing the minds of the scandalous, and that the session, upon satisfaction with their knowledge, and sense of their sin, do admit them to public profession of their repentance, in order to absolution: But if, after taking pains on them for some competent time, they still remain grosly ignorant, insensible, and unreformed, the session is to advise with the presbytery; and if the presbytery shall see cause, that then the sentence of the lesser excommunication be pronounced against them in face of the congregation, from which they are not to be relaxed, nor admitted to make public profession of their repentance, in order thereto, till the session be satisfied with their knowledge, seriousness, and reformation.

Drunkenness, swearing, &c. how to be proceeded against.

§ 9. By the 11th act, Assembly 1707, cap 3. in offences, such as swearing, cursing, profaning of the Lord's day, drunkenness, and other scandals of that nature, ordinarily the guilt for the first fault would be spoken to in private by the minister or an elder, and on promise (from a sense of guilt) to amend after admonition, they may sist there; but if the person relapse, he should be called before the session, and if found guilty, may be there judicially rebuked, where the session, on promise, from a due sense to amend, may again sist; but if the person amend not after that, the session should orderly proceed, unless repentance appear, and due satisfaction be offered, till they inflict the censure of the lesser excommunication.

Public place of repentance how a civil punishment.

§ 10. Perhaps an offender may make such satisfying acknowledgements for his scandal, that the judicature cannot but judge them sufficient to remove the same, but only he refuses to appear in the accustomed place, where scandalous persons do publicly profess their repentance; in which case, I am sure, that formality and circumstance of a fixed

place is not of such moment, as to bear the stress and weight of one satisfying the church. For the apostolical order, 1 Tim. v. 20. joining all who have offended publicly to be rebuked before all, is sufficiently answered by their receiving a public rebuke for their scandal, in the usual place and seat where they hear the word preached, and that without putting of their person under arrest in some certain place, for some time.

Keys of doctrine and discipline how they differ.

§ 11. The key of doctrine differs from the key of discipline, thus; the first doth only absolve a sinner upon the condition of saving grace, but the other doth absolve upon an outward serious profession of repentance; by the one mens faults are only reproved, but by the other particular persons are by name reprehended. Though a person be guilty of some alledged scandalous sin, yet a minister cannot, in public, give him an ecclesiastic rebuke for it, without the previous trial, and thereafter the sentence of a church judicature, otherwise he usurpeth their authority, and sheweth more of himself than of respect to church order and edification. Indeed I confess a minister may sometimes very consequentially from his text reprove such sins, and their aggravations, as may make impression upon all the hearers, that the application does agree with such circumstantiate sins. whereof they know such persons to be guilty. In which case, the reproof is to be regarded as coming from the word of God: But if there must be a plain deviation from the text, before the preacher can get that sin then reproved, in that case it looks somewhat like a design, and cannot but be feared it may want its due authority. Now a minister may easily prevent this, if he shall but chuse those texts which point, without any violence, against such sins.

When necessary that offendersshould speak in public, and how a public rebuke is to be given.

§ 12. At the offender's first appearance, he is to acknowledge himself guilty of the sin for which he is to be rebuked. Again, he should edifyingly declare his sorrow for it before absolution, that the congregation may the more cordially readmit him into their communion. But much or oft speaking is to be demanded or allowed, as it may be found most edifying: yet all recantations of errors are always to be made explicitly. A public rebuke ought to be so managed, that there be no ground given for constructing it a penance, punishment, or mark of reproach, but the minister

miniſter is to carry therein, as one much affected and afflicted with the ſin: he is to behave authoritatively, having words fitted for edifying the congregation, and humbling of the offender. And that the authority and ſolemnity of the rebuke may have the deeper impreſſion on all, it were fit that God were addreſſed in reference thereto, either before or after the rebuke.

Inſcribere in crimen, what, who is a calumnious accuſer; and who cannot accuſe, how informers are to be cenſured.

§ 13. Matters may fall under the cognition of church judicatures ſeveral ways; as, firſt, by accuſation, when a party formally appeareth, as an accuſer, and is content "inſcribere in crimen"; that is, to bind himſelf to underly the ſame cenſure, (he not proving the accuſation) which the defender would have merited, had the libel been proven. If, upon trial, there be found any preſumptions of guilt, or, if it appear that there was a "fama clamoſa" for what is libelled, the purſuer in that caſe ought not to be repute a columnious accuſer, even though he ſuccumb in his probation. No infamous perſon can be admitted an accuſer. Infamy, by Matthæus de criminibus, is defined, "Ignominia ſeu exiſtimationis læſio. quæ quis virorum honeſtorum numero eximitur." Neither are ſuch as are contemners of church authority, or who have been in former purſuits raſh and calumnious, to be admitted accuſers. A formal accuſer is not neceſſary when the offence is public. If a party cited either upon accuſation, or order of the judicature, be found innocent and acquitted, theſe who inform them thereof, whether the party require it or not, ought to be noticed, either for their calumny or impudence, as they ſhall find cauſe, act 11. Aſſembly 1707, cap. 2. ſect. 8.

Scandals tabled by inquiſition, delation, and exception.

§ 14. An accuſation, though unduly given, ſhould have this effect, as to prompt the judicatory to inquire and ſearch into the truth of the things repreſented. This gives no allowance to ſearch and prey into faults "ex levibus conjecturis;" but the warrant for it ſhould be founded upon "fama publica, clamoſa, et frequens." A delation is a verbal information or intimation made againſt ſome perſons, for faults and offences, unto the members of a church judicature. By the canon law, an informer or delator doth differ from an accuſer in this, that he is not obliged, "inſcribere in crimen;" neither incurs he any penalty, although the information be not proven; and by the 11th

An informer may be a witneſs.

act, Aſſembly 1707, cap. 7. ſect. 10. the informer may be a witneſs, except in the caſe of pregnant preſumptions of malice againſt the perſon accuſed, or where he formerly complained for his own intereſt. Many times offences and ſcandals are diſcovered to church-judicatures, by the exceptions or objections proponed by parties againſt each other; I confeſs there uſeth to be too much liberty taken for recriminations in proceſſes, which at any other time were more inexcuſable.

Where ſcandalous perſons are to ſatisfy, and what warrants a kirk-ſeſſion to admit proceſs for uncleanneſs.

§ 15. When perſons guilty of uncleanneſs live in different pariſhes, the proceſs and cenſures againſt them are to be before that ſeſſion where the woman liveth, or where the ſcandal is moſt notour. If the uncleanneſs be committed where neither party reſides, as perhaps in the fields, or in time of fairs or markets, in theſe caſes, they are to be proceſſed and cenſured where their ordinary abode is, except the place of their abode be at a conſiderable diſtance from the place where the ſin was committed, and the ſcandal be moſt flagrant where it was committed. The ſeſſion, where the ſin is to be tried and cenſured, is to acquaint the other ſeſſion where any of the parties reſide, who are, ex debito, to cauſe ſummon them to compear before that ſeſſion where the ſcandal is to be tried. Church ſeſſions are not to enter upon proceſſes for uncleanneſs where there is not a child in the caſe, unleſs the ſcandal be very flagrant; for, upon the one hand, many of theſe actions, which gave occaſion to the raiſing the ſcandal of uncleanneſs, are ſuch as are not themſelves alone publicly cenſurable, but are to be paſt by with a private rebuke; yet, on the other hand, ſome of theſe actions, which come under the name of ſcandalous behaviour, may be ſo laſcivious and obſcene, and cloathed with ſuch circumſtances, as may be as offenſive and cenſurable as the act of uncleanneſs itſelf, act 11. cap. 4. Aſſembly 1707.

TITLE II.

Of the Tranſaction, and Preſcription of Scandals.

Tranſactions betwixt parties doth not ſiſt proceſs.

§ 1. THough a party who commenced a proceſs of ſcandal, doth diſclaim or renounce the ſame, yet the church may proceed; for tranſactions between parties

ties cannot take away the church's intereſt in removing offences; yea, even though a party hath been diſmiſſed for a time, through want of probation, if it ſhall afterwards emerge, the proceſs may thereupon be wakened.

The time for preſcription of ſcandals, and requiring of teſtimonials.

§ 2. By the 11th act, Aſſembly 1707, cap. 1. ſect. 4. the ſeveral judicatures of this church ought to take timeous notice of all ſcandals; but it is judged, that if a ſcandal ſhall happen not to be noticed in order to cenſure, for the ſpace of five years, it ſhould not be again revived, ſo as to enter in a proceſs thereanent; (unleſs it be of a very heinous nature, or become again flagrant;) but the conſciences of ſuch perſons ought to be ſeriouſly dealt with in private, to bring them to a ſenſe of their ſin and duty. And for the ſame reaſon, perſons who have reſided in pariſhes, for the ſpace foreſaid, ſhould not ordinarily be challenged for want of teſtimonials. When nothing hath been objected by the members of preſbyteries or ſeſſions, againſt any of the miniſters or elders, at the privy cenſures of theſe reſpective judicatures, the members thereafter ought not to be heard, in their accuſations againſt one another, for any thing that was committed before the laſt privy cenſure; and neither ſhould the people be heard in their accuſations againſt any of their miniſters or elders, or any of the miniſters or elders againſt one another, for any thing that was committed prior to the laſt preſbyterial viſitation of the pariſh, becauſe then it was the ſeaſon, and hour of cauſe, to have propalled it, if private methods had not ſucceeded for removing the ſame; and the inſiſting, after ſuch an omiſſion, is rendered moſt ſuſpicious, unleſs ſatisfying reaſons be given for it. See cap. 7. ſect. 9. of the forecited act of Aſſembly.

TITLE III.

Of Libels, Probation, and Citation.

A libel what.

§ 1. A Libel is a law ſyllogiſm, conſiſting of the propoſition or relevancy, which is founded upon the laws of God, or ſome eccleſiaſtical conſtitution agreeable thereto, as, whoſoever is abſent from public divine ſervice on the Lord's day, ought to be cenſured. The ſecond part conſiſts of the ſubſumption or probation, which condeſcends on matter of fact, *viz.* But ſuch a perſon did,

upon

upon such or such a Lord's day, absent unnecessarily from the public worship of God. The third part consists of the conclusion or sentence, which contains a desire, that the profaner of the Lord's day, according to the laws and customs mentioned in the first part, may be censured.

A copy of the libel, with a list of witnesses, to be delivered; it must condescend on time and place.

§ 2. By cap 2. sect 7. act 11. assembly 1707, the moderator is to inform the offender appearing, of the occasion of his being called, and to give him, if desired, a short note thereof in writing, with the names of the witnesses that are to be made use of against him, that so he may be prepared to defend himself, which is agreeable to the common principles of justice and equity. The libel must condescend on time and place, when and where the facts and offences libelled were committed, that so the offender may not be precluded from proving himself to have been absent, and so impossible for him to have done such a deed, or so offended, at the time and place libelled.

What is a relevant libel. It is unlawful to be witnesses or on the assize of irrelevant libels.

§ 3. The relevancy of the libel is the justness of the proposition, whether the matter of fact subsumed be proven or not; and therefore, if the thing offered to probation be obviously irrelevant and frivolous, it ought to be rejected. and not admitted to proof: for nothing is to be admitted by any church judicature, as the ground of a process for censure, but what hath been declared censurable by the word of God, or some act or universal custom of this church agreeable thereto, as said in cap. 1 sect. 4. forecited act. Although one article of the libel *per se* be not relevant, yet if three or four articles *conjunctim* be relevant, the same may be admitted to probation The relevancy of a libel is so much to be regarded, that, I think, it is unlawful for any to be either witnesses or members of inquest upon irrelevant libels. What? Is not this to be a witness against thy neighbour without cause, Prov xxiv. 28. It was a truth that Abimelich the priest gave hallowed bread, and the sword of Goliah, to David; yet it was a bloody sin for Doeg the Edomite, to inform the wicked King against the Lord's priest, 1 Sam. xxi. and xxii. It was a presbyterian minister's duty to preach the gospel under the late persecution, secretly and cautiously, to honest hearers at their desire; yet it would have been a Doeg like sin, to have witnessed the truth in that matter before our then judges, seeing, by the 8th act of parl. 1685,

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it was death for ſuch even to preach in houſes. What is here ſaid againſt ſuch witneſs bearing, ſtrikes with as much force againſt the members of inqueſts finding ſuch irrelevant libels proven; for though it was both true, what the one witneſſed, and the other found, yet I would be afraid, if I were in their caſe, that before God I ſhould be condemned as acceſſory to the ſhedding of innocent blood. Before the witneſſes be judicially examined the accuſed party is to be called, and the relevancy of the libel diſcuſſed, ſeſt 10. cap. 2. act foreſaid. But in cauſes intricate and difficult, the diſcuſſion of the relevancy may be delayed till probation be taken; and then, greater light being thereby given, both relevancy and probation may be adviſed jointly, as the Lords of ſeſſion and privy council have often times done.

When the relevancy is to be diſcuſſed.

§ 4. When the libel is read, the defender ſometimes propoſeth a defence, which, if admitted and proven, exculpates and clears him from the fault libelled, either in whole or in part: as, if the libel be murder, and the defenſe *inculpata tutela*; or, if the libel be adultery at ſuch a time and place, and the defence be *alibi*. But the party accuſed muſt, before probation, offer the grounds of exculpation to be proven by witneſſes; in which caſe the moderator and clerk, if required, are to give warrant to cite witneſſes upon the parties charges, the relevancy of the offered exculpation being firſt ſuſtained by the judicature: and if the exculpation be fully proven, all further proof of the libel muſt there ſiſt. But if the ſubſtance of the ſcandal be once proven, there can be no place for exculpation, unleſs it be as to ſome extenuating circumſtances, not contrary to, but conſiſting with the depoſitions already taken.

Exculpation deſcribed, and when to be granted.

§ . Probation is that whereby the judge is convinced, that what is aſſerted is true; and he muſt be convinced either by confeſſion or oath of party, or writ, witneſſes, or preſumptions, as follows: probation by confeſſion, if judicial, is the ſtrongeſt of all probation; but if men confeſs a crime, rather from wearineſs of, or averſion to life, than from conſcience of guilt: or, if there appear any ſigns of diſtraction or madneſs, then ſuch confeſſions ought not to be reſted upon, except they be adminiculate with other probation. Confeſſions before a church judicature are not reſted upon before civil courts, except they be renewed before

Probation, what, and by confeſſion.

before themselves; and so it is *e contra*, for men may incline to confess things before church judicatures, knowing that church discipline is "medicina, non pœna," or "ob "levamen conscientiæ," which ought not to be discouraged: whereas they may deny the same fault, and resile before the civil judge, for fear of corporal punishment.

Oath of calumny, verity, and credulity, what.

§ 6. An oath of calumny may be exacted of either party, whereby they swear that they believe or judge, that the points they insist on, are both just and true, and they will be holden as confessed, if they refuse to depone when required. By an oath of verity, or for confirmation, the swearer positively affirmeth by his oath, that what he asserteth is true; and it is the only oath sworn by a party which can terminate the plea and strife. But by an oath of credulity, the swearer doth not assert the verity of the matter, but the verity of his belief of the matter, which only terminates the plea in so far as to exclude him who swareth, from insisting on these points contrary to his own belief or persuasion; See Stair's Instit. p. 698. 701.

Probation by oath of party instanced; it is not to be pressed.

§ 7. If the delated father of a child, after private conferences, do still deny, then the session is to cause cite him to appear before them: if he persist in his denial, when compearing, he is to be confronted with the woman, and the presumptions held forth as particularly as possible: and if after all this he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as, suspicious frequenting her company, or being "solus cum sola, in loco suspecto," or in suspected postures, and such like, which he cannot disprove, may so lay the guilt upon him, as to shew him, that there appears no other way of removing the scandal, but his appearance to be publicly rebuked therefor: if he will not submit himself to be rebuked, it is safer that a true narrative of the case be laid before the congregation, and intimation given, that there can be no further procedure in the matter, till God in his providence give further light, than that an oath be pressed, and upon refusal, proceed to the higher excommunication. But if the person accused do offer his oath of purgation, and crave the privilege thereof, the presbytery may allow the same, the form whereof may be as follows.

§ 8. I

§ 8. I A B now under proceſs before the preſbytery of for the ſin of alledged to be committed by me with C D. and lying under that heavy ſlander, being repute as one guilty of that ſin: I, for ending the ſaid proceſs, and giving ſatisfaction to all good people, do declare before God, and this that I am innocent and free of the ſaid ſin of or having carnal knowledge of the ſaid C. D. and hereby I call the great God the Judge and Avenger of all falſehood, to be witneſs and judge againſt me in this matter, if I be guilty, and this I do by taking his bleſſed name in my mouth, and in ſwearing by him who is the great Judge, Puniſher, and Avenger, as ſaid is, and that in the ſincerity of my heart, according to the truth of the matter, and my own innocence, as I ſhall anſwer to God in the laſt and great day, when I ſhall ſtand before him, to anſwer for all that I have done in the fleſh, and as I would partake of his glory in heaven, after this life is at an end. Style of the oath of purgation.

§ 9. But this oath is not allowed to be taken in any caſe but this, when the preſumptions are ſo great, that they create ſuch jealouſy in that congregation and ſeſſion, that nothing will remove the ſuſpicion but the man's oath of purgation; and when his oath will indeed remove the ſcandal and ſuſpicion. In all other caſes this oath is in vain, and ſo ſhould not be admitted, and never but by advice of the preſbytery. It is to be taken, either before the ſeſſion, preſbytery, or congregation, as the preſbytery ſhall determine. And if it be taken before the ſeſſion or preſbytery, it is to be intimate to the congregation, that ſuch a perſon hath taken ſuch an oath, and the party may be obliged to be preſent in the congregation, and may be put publicly to own his purging himſelf by oath, and thereupon be declared free from the alledged ſcandal. All what concerns this oath, is recommended by cap. 4. ſect. 6. &c of the forecited act of Aſſembly. When and where this oath is to be allowed and taken; and its effects.

§ 10. After an end is made, as above, with the perſon delated as father, the woman is to be dealt with to give the true father; and if after all ſerious dealing and due diligence, ſhe give no other, ſhe is to be cenſured according to the quality of the offence confeſſed by her, without naming the perſon delated; the judicature reſerving place for further cenſure, upon further diſcovery. How the woman is to be cenſured when the fact is not proven againſt the man.

How a voluntary and malicious confessor of uncleanness is to be censured.

§ 11. If a person do voluntarily confess uncleanness where there is no child, and the case be brought to the kirk-session, they are to inquire whether it floweth from disquietness of mind, or from sinistrous design; as when a man suing to a woman for marriage, is denied, but spreads the report that he hath been guilty with her. If it be found that there is no ground for the confession, the person confessing is to be censured as defaming himself, and likewise as a slanderer of the other party; and withal, application is to be made by the session to the civil magistrate, that he may be punished according to law: see that forecited fourth chapter of the act of Assembly.

Probation by writ.

§ 12. It is rare to prove a scandal by writ, but yet it may happen so to be proven, and the want of the writer's name and witnesses, ought to be no objection in church courts against writs, more than in bills of exchange. If one denieth that to be his subscription, it is hard to sustain its being proven to be his "per comparationem literarum," which is but a presumption; and men's hands may be sometimes so artificially imitated, that it shall be hard to discern which is which; besides, one man's writ may differ from its self at several occasions.

Probation by presumptions.

§ 13. Probable presumptions, and many concurring, may do much to prove, especially in such things which rarely can be proven with ordinary clearness. The presumption of cohabitation, after the parties are discharged, is sufficient, as may be seen on that title, to infer adultery: also, cohabitation, and behaving as man and wife, for some considerable time, presumeth marriage: and the depositions of witnesses, are sometimes founded upon presumptions, as when they depone upon things which depend upon acts of the mind, as, ebriety, and dolus malus. But when a libel is only proven by presumptions, it is not so safe to pass the ordinary censure thereupon, as if it had been proven by unexceptionable witnesses and full probation.

Form of a diligence against witnesses, their non-compearance to be censured.

§ 14. Witnesses may be cited on fewer days than parties. The diligence against them may run in this form, viz. Mr A. B. moderator, &c forasmuchas pursuer &c. having applied to us for a diligence to cite witnesses in the said matter, in manner and to the effect underwritten: Therefore we require you, that upon sight hereof,

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ye pass and lawfully summon personally, or at their dwelling places, to compear before us within the kirk of upon the day of in the hour of cause, with continuation of days, to bear leal and soothfast witnessing, upon the points and articles of the said process, in so far as they know, or shall be inquired at them; with certification as effeirs. And this our precept you are to return duely execute and indorsed. Given, &c. by warrant, &c. If witnesses refuse after three citations to compear, then they may be proceeded against as contumacious: or, if judged needful, after the first or second citation is disobeyed, application should be made to the civil magistrate, that he may oblige them to appear; see that 9th sect. cap. 2. of that frequently above cited act of Assembly.

§ 15. In church judicatures, women and minors, past fourteen years of age, are received witnesses. If the defender appear, he may object against any of them, and if the objection be relevant, and made evident to the judicature, the witnesses are to be cast: for which see that same act. The objections of infamy, or enmity, are relevant to cast any witness: but the design of church courts being "ad "tollendum scandalum, & ad eruendam veritatem," they will sometimes receive witnesses cum nota, against whom some common and general objections have been made, reserving to themselves to consider how far they will make use of their testimony at advising the sufficiency of the probation.

Objections against witnesses.

§ 16. Witnesses are to be sworn thus, lifting and holding up the right hand, they swear by God, and as they shall answer to him, they shall tell the truth, and nothing but the truth, concerning the articles and points of the present process, in so far as they know, or shall be asked. Which oath the moderator is judicially to administer, and though there be no relevant objection against the witnesses, yet they are to be solemnly purged of malice, bribe, or good deed, done or to be done, and of partial council, by which some understand prompting or consulting for making of the process. The witnesses are to be sworn and examined in presence of the accused party, if compearing, and he may desire the moderator to propose such questions, or cross questions, to the witnesses, as may tend to his

How witnesses are to be sworn, examined, and subscribe the *initialia testimonii*.

exculpation, which the judicature think pertinent, are to be propoſed. The initialia teſtimoniorum, ſuch as, their age, married, or unmarried, or ſoluti, that is, widows. and the like, are propoſed, that the deponent's veracity may by theſe be traced. If witneſſes cannot ſubſcribe their names to their depoſition, the clerk is to mark that they declare they cannot write, and the moderator is always to ſubſcribe the ſame, whether they can write or not. If they can but ſubſcribe the initial letters of their names, they ſhould do it, and the clerk is to write about their mark thus (Adam A. B. Bruce his mark).

Singularity of witneſſes, what.

§ 17. A ſingular witneſs is one that hath no concurring witneſs. This ſingularity is either, "obſtativa," which is, in a crime not reiterable; as if one ſhould depone, that a man was murdered at one place, and another depone he was murdered at another place. Again, there is a "ſingularitas adminiculativa," which is, where the witneſſes do not concur in their depoſitions; yet they are not contrary but the one aſſiſts the other, as in the proving that an horſe was ſtolen. one ſhould depone that he ſaw the thief go in without a horſe, and another ſaw him take the horſe. In the third place, there is a "ſingularitas diverſificativa," when witneſſes depone different acts in a crime, which is reiterable; as if one witneſs deponè upon an adultery, committed at one time, and another of an adultery committed at another time. Is that perſon's being guilty of adultery ſufficiently proven?

Probation by notoriety, and if judges may be witneſſes.

§ 18. Of things notour. there are ſome which cannot be proven, and yet are true, as ſuch a man is another's ſon: other things can be proven which are "facti permanentis," ſuch as, that there is a palace or fountain in ſuch a town, "ſed notorium non indiget probatione" Again, there are things notour, which need no probation, which are "facti tranſeuntis," as that ſuch a perſon did publicly commit murder. Although judges cannot be both judges and witneſſes, yet he is a witneſs and a judge too of what he ſees and hears in judgment, for theſe are counted as notour; See Stair's Inſtit. p. 702.

How parties are duly ſiſted before a churchjudicature, and the *requiſita citationis*.

§ 19. It is repugnant to the laws of God and man, to condemn any that is abſent or unheard, unleſs his abſence proceed from his own fraud or ſtubbornneſs: therefore in order to a due hearing, citations muſt be given to parties con-

concerned, in writing, eſpecially if they be called before preſbyteries, and other ſuperior judicatures of the church; ſee the 2d cap. of the forecited act of Aſſembly. The citation muſt bear, 1 The judicature before which the perſon cited is to appear. 2. The name of the purſuer, (if the party be not cited by order of the judicature) 3. The name of the defender. 4 The cauſe for which the perſon is cited. 5. The place where compearance muſt be made. And laſtly The time when they muſt compear. And this is to be obſerved, that all parties and witneſſes cited before church courts, are to be deſigned in theſe citations as they are or may be commonly in all other writs. If they be reſiding within the pariſh, they may be cited upon forty eight hours advertiſement.

Parties out of the country how cited.

§ 20 It hath ſometimes been practiſed, to cite parties even when out of the country, a particular inſtance whereof is, the commiſſion of Aſſembly 1644, cauſed cite ſome Scots, then about Oxford in England, (for emitting a malignant declaration) at the market croſs of Edinburgh, pier and ſhoar of Leith, to appear before the then next enſuing General Aſſembly, upon ſixty days warning, counting from the day of the citation.

Parties in another pariſh how cited.

§ 21. If the perſons be charged with ſcandal, who live within the bounds of another pariſh, the kirk ſeſſion of that pariſh where that perſon reſides, ſhould be deſired to cauſe cite them to anſwer before the ſeſſion in whoſe bounds the ſcandal happened, and the ſame courſe is to be followed in ſuch caſes by the other judicatures of the church.

Citations dilatory and peremptory, how to proceed with thoſe who diſobey or abſcond.

§ 22. Citations are called dilatory for the firſt and ſecond, that the party may appear; and the third, or one given *apud acta*, is called peremptory, wherein the judicature certifies the perſon cited, that they will proceed to the cognition of the cauſe, though he appear not, or that they will proceed againſt him as contumacious. If the perſon do not compear upon this peremptory citation, and no relevant excuſe therefor be propoſed and ſuſtained, the judicature is to proceed to take cognition, either by examining of witneſſes, or by other documents, for the verity of the ſcandal, and that before they cenſure him for contumacy; ſee cap. . ſect 6 of the forecited act. If any under proceſs for ſcandal, abſcond, they ſhould be cited firſt from the pulpit of the pariſh where the proceſs depends, and where they

they reside; and if they do not thereupon appear, they are next, by order of the presbytery, to be cited from the pulpits of all the kirks within their bounds, to compear before them; and if they do not then appear, they are to be declared fugitives from church discipline in all the kirks within that bounds, desiring that if any know of the said fugitives, they may give notice thereof, and the presbytery is to sist there, until they get some further account of these persons; see § 18. of the forecited cap. and act. This citation is commonly called *edictal*, and likewise takes place when the person to be cited takes methods to hinder a copy to be given in the usual way, or, when it is dangerous for the officer to travel to that place.

Style of a summons, and of the copy and execution thereof, and of caution to appear.

§ 23. Sometimes the warrant for citing bears the libel, and then a full copy thereof is given, but sometimes it bears not the libel, and then the defender is cited to hear and see the informations against him, and must, when appearing, be treated as in § 2. of this title; the form of which summons may run thus: Mr A. B. minister and remanent members of the church session of to our officer, we require you, that upon sight hereof, ye pass and lawfully summon personally, or at his dwelling-house, to compear before the said session, within the session-house at the day of next to come, in the hour of cause, to answer to the information or libel against him, for the sin and scandal of laid to his charge: with certification, &c. given at the day of by warrant of the said session, A. B. sess. cls. Besides the general certification of the church censures, which is the method ecclesiastic courts do take, to procure obedience to their orders, there are some proper certifications, as in transportation of ministers, and their edicts of ordination and admission, of which already in book 1. Now the copy of a summons may run thus: I church officer of by virtue of an order directed from them, lawfully summons you to compear &c. with certification, &c. conform to the principal warrant, dated at the day of this by warrant of the said session I give, before these witnesses, &c. A. B. officer. He is to return the summons execute in these terms, viz. upon the day of I church officer

officer of past at the command of the within written order directed from the church session of and by virtue thereof, lawfully summoned the within mentioned personally apprehended, and delivered to him a true copy of the said warrant, to compear before the said session, day and place within specified, to answer for the sin and scandal of laid to his charge; and made certification as is within expressed. This I did conform to the within written warrant in all points; before these witnesses, A. B, &c. And for the more verification hereof, we have subscribed thir presents at the day of, &c. The execution must bear, that either citation was given to the party personally, as above, or left at his dwelling-house, with his wife, bairns, or servants, if the officer get entry; or by affixing a copy on the door, after knocking several times, if he get not entry. If any man bind as cautioner for another, that he shall undergo the discipline of the church, under a pecunial pain for the use of the poor, he should bind to the magistrate, and not to the church.

All defenders must appear personally, even though minors, and how societies appear.

§ 24. When minors are convened before church judicatures, their curators are not to be cited as before civil courts, though they may be acquainted therewith, that their pupils may receive suitable advice and instruction from them. A minor, that is, a male past fourteen, and a female past twelve years of age, may be called before church judicatures, when guilty; as for pupils under that age, it will be rare if ever they be concerned as delinquents, except "ubi "malitia supplet ætatem;" that is, where strength of nature is as far advanced in them as it useth to be in others of riper years. The conclusion of all church process, being against the defenders themselves, none can appear for them; nay, advocates are not so much as allowed to plead for compearing parties, otherwise pleas would probably be more frequent, and tedious too: and the truth hath been many times expiscate by the countenance, behaviour, or expressions of parties themselves, which would have been concealed by advocates. In the M. S. acts of Assembly at Edinburgh 1575, they refuse to allow advocates to plead before them in a process of dilapidation against the bishop of Dunkeld, but ordains him to answer himself; and if he think fit, may chuse any minister to reason for him. When incor-

incorporations are cited it is neceſſary they be allowed to anſwer by ſome commiſſioned from their body, who muſt be members of that ſociety, or reſide therein. If a burgh royal were cited, they would not be allowed to appear by him who reſides not among them, but only is one of their honorary burgeſſes; and no party ſuſtains great loſs thereby, ſeeing they may adviſe with whom they pleaſe in drawing of anſwers, and the like.

TITLE IV.

Of the vocational and perſonal Faults of Miniſters and Probationers, how they are cenſured, and of the Method of proceeding to cenſure, and of reponing them againſt theſe Cenſures.

Non-reſidence what, and how cenſured, who are deſerters, and how cenſured, and defences againſt the ſame.

§ 1. BY the 132d cap. parl. 8. James VI. non-reſidence is declared to be, when a miniſter reſides not within the pariſh, but is abſent therefrom, and from his kirk, and uſing of his office, for the ſpace of four Sabbaths in the year, without a lawful cauſe, allowed by the preſbytery; which non-reſidence is deprivation. By parity of reaſon, the ſame pain may be applied againſt principals, and maſters of univerſities, who attend not upon their charges. The miniſtry is ſaid to be *militia ſpiritualis*, they are watchmen fixed by their ſuperiors as centinals at ſuch poſts, which, if they deſert without warrant, all the order of the ſpiritual diſcipline is overturned. Agreeable hereunto is the act of Aſſembly 1596, ratified by Aſſembly 1638, whereby it is appointed, that miniſters not reſident with their flocks be depoſed, according to the acts of the General Aſſembly, and laws of this realm, otherwiſe the burden is to lie on the preſbytery, and they to be cenſured for the ſame; and by the 7th article of the ſame act, it is appointed, conform to the old acts of Aſſemblies therein mentioned, that miniſters reſide in their own pariſhes, or at their ordinary manſes. By the 4th cap. of the policy of the kirk, they who are once called of God, and duely elected by man, and have once accepted the charge of the miniſtry, may not leave their functions, otherwiſe the deſerters are to be admoniſhed, and in caſe of obſtinacy, excommunicated.

ted. And by the M. S. acts of Assembly at Edinburgh, 1570 It is appointed that ministers at their public instalment, shall promise solemnly never to leave their ministry at any time thereafter, under the pain of infamy and perjury. Conform hereunto, in the cap. 1. art. 14. of the French church discipline, ministers, with their families, must actually reside in their parishes, under pain of deposition: and by art. 23. deserters of the ministry shall be excommunicated, if they do not repent, and reassume the office God hath committed unto them. By the Assembly 1690, sess. 15. although ministers have received their ordination from foreign churches, yet, if they have a standing relation to any charge in this church, they are not to remove out of the kingdom, without consent of the respective judicatures of this church, otherwise they may be treated as deserters. See the ordination engagements, book 1. If persecution be particular against one minister, in that case, it is generally thought, he may warrantably flee, without being esteemed a deserter; but it will scarcely defend against desertion, when the persecution becomes general. A minister seems to be particularly tied to wait upon his charge in the time of a public calamity; and therefore the commission, 16th May 1645, found that Mr Mungo Law, minister at Edinburgh, could not be spared from his charge, to attend the General's regiment, in respect of the fear of the infection in the city.

§ 2. Supine negligence is, an habitual or customary neglect of some one or other of the pastoral duties; but every escape cannot infer it, the pastoral office being in some sense a burden too heavy for the shoulders of angels. By our law, supine negligence is relevant to infer deposition, even as error, scandal, ignorance, and contumacy are; see the act of parl. 1690, settling the church government. And by the forecited act of Assem. 1596, it is appointed, that such ministers as be slothful in the ministration of the sacrament of the Lord's Supper, be sharply rebuked; and if they continue therein, that they be deposed. And by the act of Assembly June 13. 1646, among the enormities and corruptions of the ministerial calling, the following is mentioned, viz. idleness, that is, seldom preaching, as once on the Lord's day, or in preparation for public duties, not being given to reading and

Supine negligence what, and how censured.

meditation, but only now and then, not like other tradeſmen, continually at their work.

Dilapidation what, and how cenſurable.

§ 3. Dilapidation of benefices is, the deed of any churchman, whereby his rents are waſted, diminiſhed, or altered to the worſe from what they were. And the puniſhment is, diſannulling of the deed, and deprivation to the granter, Jam. VI. parl. 7. cap. 101. by that forecited act of Aſſembly 1596, it is declared, that delapidation of benefices, demitting of them for favour or money, without advice of the kirk; interchanging of benefices, by tranſaction, or tranſporting of themſelves by that occaſion, without advice of the kirk, are preciſely to be puniſhed, Suchlike, ſetting of tacks without conſent of the Aſſembly, is to be puniſhed as dilapidation.

Simony what, and how proven and puniſhed.

§ 4 Simony is the buying or ſelling of any ſpiritual thing, or of what is annexed thereto. The canoniſts deſcribe it to be, "Studioſa voluntas, ſeu cupiditas emendi "vel vendendi ſpiritualia, vel ſpiritualibus annexa." Thus Simony may be committed by making advantage of adminiſtrating the ſacraments. By Jam. VI. parl. 21. act 1. any condition made by the intrant with the patron, reſerving to himſelf a ſufficient maintenance anſwerable to the ſtate of the benefice, is declared not to be Simony. In this crime, witneſſes who are not very habile, or "omni exceptione majores," ſuch as whores and infamous perſons, may be admitted, and it may be proven by preſumption or oath of party, according to the opinion of ſome lawyers, and all becauſe it is ordinarily carried on with much privacy and clandeſtine dealing. "Ambitus" is "crimen mere eccleſiaſticum," and not uſually puniſhed by laicks. By the forecited act of Aſſembly 1596, it is provided, that none ſeek preſentations to benefices, without advice of the preſbytery; and if any do in the contrary, they are to be repelled as *rei ambitus*. They further appoint that it be inquired, if any by ſolicitation or moyen, directly or indirectly, preſs to enter into the miniſtry; and if it be found, the perſon ſo ſoliciting, is to be repelled; theſe three crimes, Dilapidation, Simony, and Ambitus, do often meet in one and the ſame perſon, and the crime is denominate from that which moſt predominates in it.

Ambitus, what, and how cenſured.

§ 5. By the 23d act of Aſſembly 1696, it is recommended to all ſynods and preſbyteries, that they advert to the

the many irregularities committed by vagrant unfixed miniſters: and preſbyteries, where any difficulties occur, are to conſult their ſynods, before they proceed to cenſure. By the 27th act of that Aſſembly, they ſuſpend one from the exerciſe of his miniſtry, becauſe he exerciſed it in a vagrant diſorderly way. And by the 18th act of Aſſembly 1701, preſbyteries are appointed to ſend in to the commiſſion an account of ſuch miniſters, or preachers, as intrude into pariſhes, that application may be made to the government for removing them, that the kirks intruded into may be orderly planted. Aſſem. 1694. ſeſſ. 14. the Queen by her proclamation, dated at Windſor, September 20. 1708, in purſuance of ſeveral acts of parliament made in favours of the preſent church eſtabliſhment, particularly the act 1695, againſt intruders, doth require and command, all ſuch as have intruded upon churches or manſes, to remove therefrom, and all magiſtrates and judges within their reſpective juriſdictions, are to ſee the ſame executed, by decerning accordingly, and procuring letters of horning and caption thereupon to be directed *in communi forma*. By the diſcipline of the French church, cap. 1. art. 26. the miniſter that ſhall intrude himſelf, although he were approved by the people, is not to be approved by the neighbouring miniſters or others, but notice muſt be given to the colloquy thereof, or provincial ſynod. And by the 55th article of that chapter, the names of vagrant miniſters are to be proclaimed through all the churches.

Intruders and vagrant miniſters, who, and how cenſured.

§ 6. By the foreſaid act of Aſſembly 1596, ratified 1638, it is enacted, That ſuch miniſters as ſhall be found not given to their books and ſtudy of the ſcripture, not given to ſanctification and prayer, that ſtudies not to be powerful and ſpiritual, not applying the doctrines againſt corruptions, which is the paſtoral work, obſcure and too ſcholaſtic before the people, cold and wanting in ſpiritual zeal, negligent in viſiting the ſick, or caring for the poor, or indiſcreet in chuſing parts of the word not meeteſt for the flock, flatterers, and diſſembling of public ſins, and eſpecially of great perſonages in their congregations: all ſuch miniſters are to be cenſured according to the degree of their fault, and continuing therein are to be deprived. Item, Such as be ſlothfull in the miniſtration of the ſacraments,

Vocational faults of miniſters, how cenſured.

and irreverent, or profaners thereof, by admitting the ignorant or profane thereto, and omitting the due trial of such as are to be admitted, or using but light trial, or having respect in their trial to persons; all such ministers are to be sharply rebuked; and if they continue therein, are to be deposed. Item, But if any minister be found a seller of the sacraments, he is to be deposed *simpliciter*: and such as collude with scandalous persons, by overlooking them for money, do incur the like punishment. Item, All ministers, who neglect the due exercise of discipline, and continue therein after admonition, are to be deposed

Personal faults of ministers how censured.

§ 7. By the forecited act 1590, it is appointed, that such ministers as are light and wanton in their behaviour, as in gorgeous and light apparrel, or in speech, or in using light and profane company, or that are guilty of dancing, carding, diceing, and the like, if they continue therein after due admonition, shall be deposed as scandalous to the gospel; and agreeable hereto is the 54th canon concilii Laodiceni, "Quod non oportet sacratos, vel clericos in nupti- "is vel conviviis aliqua spectacula contemplari, sed priusquam ingrediantur Thymelici, surgere et secedere de- "beant." Item, Ministers found to be swearers or banners, profaners of the Sabbath, drunkards or fighters, are to be deposed *simpliciter*. By the 27th and 42d of these canons, called *apostolical*, "Episcopum, vel presbyterum, "vel diaconum verberantem fideles peccantes, aut infide- "les injuriam facientes, ac per hoc timeri volentem, ab "officio deponi mandamus." And by the other canon, "Episcopus, presbyter, aut diaconus, aleæ vacans, aut "ebrietatibus, vel desistat, vel gradu suo dejiciatur." Item, Ministers that are detractors, flatterers, breakers of promise, liars, brawlers, and quarellers, after admonition, if they continue therein, they are to be deposed. By the 53d canon, called *apostolical*, "Si quis clericus in cau- "pona comedens deprehensus fuerit, a communionis so- "dalitate secernatur, præter eum qui vitæ necessitate di- "verit in hospitium." And by the 55th canon concilii Laodiceni, "Quod non oportet sacratos vel clericos, ex "collatione, convivia peragere, sed neque laicos." And by the 43d canon, concil. Carthaginen "Ne in caupo- "na versentur clerici, nisi hospitio accepti. Ut clerici "comedendi, vel bibendi gratia, non ingrediantur, nisi

hospitii

" hoſpitii neceſſitate compulſi." By our law, (vid. tit. 13. book. 3. the haunting of taverns at unſeaſonable hours therein condeſcended upon, is equally puniſhable with drunkenneſs. So that a miniſter's drinking temperately in change-houſes, though with good company (but at forbidden hours) will not defend him againſt the puniſhment of drunkenneſs. Item, Miniſters are not to take uſury, and if they continue therein, they are to be deprived. By the 44th of theſe canons called *apoſtolical*, " Epiſcopus, aut " preſbyter, aut diaconus, uſuras exigens a debitoribus, " vel deſiſtat, vel ordine mulctator." Item, Miniſters given to unlawful trades and occupations, for filthy gain, ſuch as, keeping of inns, bearing of wordly offices in noblemen and gentlemen's houſes, merchandiſe, and ſuch like, buying of victual, and keeping it to the dearth, and all ſuch wordly occupations, as may diſtract them from their charge: All ſuch are to be admoniſhed, and if they continue therein, are to be depoſed. By the 6th of theſe apoſtolical canons, " Epiſcopus, aut preſbyter, aut diaco- " nus ſeculares curas non adſumat, alioqui deponatur." And by the 20th canon, " Clericus ſe fideijuſſionibus im- " plicans gradu ſuo dejiciatur." Calderwood, in his hiſtory, p. 438. acquaints us, that by acts of Aſſembly miniſters are prohibited to join with their miniſtry, the office of a notary, huſbandry, or hoſtilary, &c under the pain of depoſition. In the M. S acts of Aſſembly 1572, the regent deſiring ſome learned miniſters to be planted ſenators of the college of juſtice, the Aſſembly finds that none were able to bear both the ſaid charges. The Aſſembly 1643, (in the index of their unprinted acts you may find ſome of it), conſidering that Mr William Bennet miniſter at Ancrum, did vote in the election of a commiſſioner to the convention of eſtates from the ſhire of Roxburgh, as one of the barons and freeholders there, they do recommend it to him to abſtain from civil courts and meetings. As alſo, they underſtanding, that Mr Andrew Murray miniſter at Ebde, had come to ſucceed to the Lord Balvaird, they appoint him to exerciſe his calling of the miniſtry, and to reject ſuch temporal honours during his own life, as being incompatible with that calling, and very good reaſon that the leſſer and leaſt uſeful ſhould cede to the greater and better work. Item, By the forecited Aſſembly, act 1596, ratified by the

Aſſembly

Assembly 1638, all their members are discharged from attending the court, and affairs thereof, without the advice, and allowance of their presbytery: And that they intent no civil action without the said advice, except in small matters. Calderwood, in his history of Assembly 1600, saith to this purpose, "Qui ambulat in sole coloratur, qui tangit picem inquinatur, qui frequentat aulam et curiam profanatur; forum pontificis Petrum ad abnegationem Christi adegit quæ est corporum constitutio, ea est et morum, circumposito aere calido calescimus, et rursus frigido frigescimus; cum sanctis sanctus eris, cum perversis perverteris." Item, Ministers are to use godly exercises in their families, such as, teaching of their wives, children and servants, in ordering prayers, reading of the scriptures, and such like other points of godly conversation: whoever be found negligent therein, after due admonition, are to be deposed. Item, Ministers that are not spiritual, and profitable in their ordinary converse, are, upon due trial, to be sharply rebuked. Item, No minister is to countenance or assist a public offender challenged by his own minister for his public offence, or to bear with him, as if his own minister were too severe upon him, under pain of admonition and rebuke.

Remedies against vocational and personal faults of ministers.

§ 8. The General Assembly, by their act 13th June 1646, provide the following remedies against the evils both in the calling and lives of ministers, and appoints them to be observed: *Imprimis*, None are to be taken in to be a helper, or second minister, but such as are able for the same charge. Item, That presbyteries be faithful in the trial of intrants, and in loving admonitions one of another secretly, and that absents from synods and presbyteries be censured. Item, The moderators of presbyteries are to see that godly conference be entertained at presbyterial meetings, even in the time of their refreshments. Item, Ministers are to have more frequent converse among themselves, for strengthening one another's hands, and begeting and cherishing of friendship, and removing of misconstructions. Item, Ministers are to cherish weak beginnings in the ways of God, and couragiously oppose all revilers and mockers of the godly. Item, Silence, or ambiguous speaking in the public cause, and not speaking against the corruptions of the time, are to be seasonably censured;

cenſured; and ſuch as mock, upbraid, or threaten, ſtop, or diſturb miniſters for freedom in preaching, and the faithful diſcharge of their conſcience, are to be proceſſed; ſee Aſſembly 1048, ſeſſ. 26.

§ 9. A presbytery is not to proceed to the citation of a miniſter, or any way begin the proceſs, until there be firſt ſome perſon, who, under his hand, gives in the complaint, with ſome account of its probability, and undertakes to make out the libel, at leaſt under pain of being cenſured as a ſlanderer. This informer or accuſer ought to be of good report; for it were of dangerous conſequence to admit every body to accuſe. By the 21ſt canon, concilii Chalced. "Clericos vellaicos, Epiſcopos, aut laicos ac- "cuſantes, non indiſcriminatim, nec citra inquiſitionem, "admittere ad accuſationem, niſi eorum exiſtimatio primo "examinata fuerit." Yet presbyteries may proceed againſt miniſters, when a "fama clamoſa" of the ſcandal is ſo great, that for their own vindication, they find themſelves obliged to begin the proceſs without any particular accuſer, after they have inquired into the riſe, occaſion, broachers, and grounds of the ſaid common fame. What warrants a preſbytery to enter in proceſs againſt a miniſter: and how accuſers are to be admitted.

§ 10. After the preſbytery has conſidered the libel raiſed againſt the miniſter, then they order him to be cited, to get a full copy, with a liſt of the witneſſes names to be led for proving thereof, and a formal citation is to be made in writ, either perſonally or at his dwelling-houſe, bearing a competent time allowed to give in anſwers unto the libel, and his juſt defences and objections againſt witneſſes, at leaſt ten free days before the day of compearance; and the citation ſhould bear the date when given, and the names of the witneſſes to the giving thereof, and the execution bearing its date, with the names and deſignations of the witneſſes, ſhould be made in writ, and ſigned by the officer and witneſſes: which being accordingly returned, he is to be called. As to the form and manner of citations, it is not to be underſtood as a privilege reſtricted to miniſters only, but it is to be extended to all who are convened before church judicatures, with little difference, as has been obſerved on title Citations. The manner of citing miniſters

§ 11. If the miniſter compear, the libel is to be read unto him, and his anſwers thereunto are to be read, in order to the diſcuſſing of the relevancy. If the libel be found How to behave towards a miniſter compearing and confeſſing

found relevant, then the presbytery is to endeavour to bring him to a confession: If the matter confessed be of a scandalous nature, such as uncleanness, or the like, the presbytery, whatever be the nature of his penitence, are *instanter* to depose him *ab officio*, and to appoint him in due time to appear before the congregation where the scandal was given, and in his own parish, for removing the offence. by the public profession of his repentance.

How towards one absenting or contumacious.

§ 12. If a minister absent himself by leaving the place, and be contumacious, without making any relevant excuse, after a new public citation, and intimation made at his own church, when the congregation is met, he is to be holden as confessed, and to be deposed and censured *instanter* with the lesser excommunication; but if after some time he do not subject himself to the censures of the church, he may be proceeded against till he be censured with the greater excommunication.

How towards him who compears, and denies, but a gainst whom the libel is proven.

§ 13 If a minister accused do appear, and deny the fact, after the relevancy is found, the accused is to be heard object against the witnesses, and allowed to be present at the examination, and modestly to cross-interrogate. If after consideration of the reputation, hability, and depositions of the witnesses, the judicature shall find the scandal sufficiently proven, they are to proceed to censure, as in the case of confession.

How to carry towards a minister charged with errors.

§ 14. If the errors be not gross, and striking at the vitals of religion, or if they be not pertinaciously stuck unto, or industriously spread, with a visible design to corrupt, or that the errors are not spreading among the people, then lenitives, admonitions, instructions, and frequent conferences are to be tried in order to reclaim. And unless the thing be doing much hurt, so as it admits of no delay, the synod or General Assembly are to be advised with, and the reference intimated to the minister concerned, which is agreeable to the 12th act of Assembly 1694. And by that act all the judicatures of the church are forbidden to censure any minister whatsoever for not qualifying themselves in the terms of the act of parliament, by taking the oaths to the civil government. It is true, that appointment continues only till the next Assembly; but the same reason for making that temporary, may make it a perpetual act.

§ 15. If

§ 15 If the libel againſt a miniſter be for a multitude of ſmaller things laid together, the preſbytery in proceeding therein are to make a preſbyterial viſitation of that miniſter's pariſh. And if they find theſe things, laid to his charge, to have been committed ſince the laſt viſitation, or find a ſatisfying reaſon wherefore they were not then tabled, they are to inquire how far the miniſter hath been guilty of giving offence, after he was acquainted that offence had been taken at theſe things he is charged with: it ſhould be likewiſe inquired, if any of the complainers did firſt in a private way inform any of the neighbouring miniſters of theſe things now publicly complained of? and the preſbytery is to judge accordingly. If they find upon trial, the complaint to reſolve on the miniſter's having committed ſuch acts of infirmity or paſſion; as, conſidering all the circumſtances, may be either amended, and the people ſatisfied, and that the offence was taken by the miniſter's own people, only or mainly, then the presbytery is to take all prudent ways to ſatisfy and reclaim both miniſter and people.

How to carry towards a miniſter charged with a multitude of ſmaller things laid together.

§ 16. By the 4th act, ſeſſ. 2. par. 1. Car. II. miniſters are to be ſuſpended that abſent from the dioceſan ſynod for the firſt fault, and that ſuch a cenſure may be inflicted where no excuſe is offered, is not to be doubted. Yet our church judicatures are rather inclinable to threaten, and be in readineſs to revenge every diſobedience, than actually to inflict the cenſures they may upon every juſt provocation. Miniſters are ſaid to be ſuſpended, becauſe their reſtoring or depoſing is yet doubtful, and doth much depend upon their future behaviour, or upon further diſcoveries and clearer probation

Abſence from ſynods cenſured by ſuſpenſion, and why ſo called.

§ 17. By the General Aſſembly April 1582, as related in Calderwood's hiſtory, the cauſes of depoſition were judged to be theſe, viz. Hereſy, Popery, blaſphemy, perjury, adultery, inceſt, fornication, ſlaughter, theft, common oppreſſion, common drunkenneſs, uſury againſt the laws of the realm, non-reſidence, abſence from his kirk, and neglect of his office for forty days together in a year, without a lawful impediment allowed by the next General Aſſembly; plurality of benefices, (but the act of parliament ſays, plurality of benefices having cure), dilapidation thereof, and ſimony. Which crimes are likewiſe declared cau-

Grounds of depoſition, what.

Excommunication and deposition rarely in one sentence.

ſes of deprivation, by cap. 132. of parl. 1584. It is to be obſerved, that the church doth not, except in ſome moſt horrid crimes, depoſe and excommunicate both at once. By the 25th of the canons, called Apoſtolical, "Epiſcopus, aut presbyter aut diaconus in ſcortatione, vel perjurio, vel furto deprehenſus, ordine ſuo ſummoveatur; ab eccleſia tamen non excludatur," miniſters are not to employ depoſed miniſters in any exerciſe of the paſtoral calling, or entertain miniſterial communion with them, under pain of depoſition. By the 11th of theſe forecited cannons, "Si quis clericus cum depoſito, ut cum clerico, ſimul oraverit deponatur et ipſe," if any depoſed miniſter ſhall apply to the civil magiſtrate for redreſs againſt that ſentence in ſo doing he acknowledgeth in the civil magiſtrate a privative power, to hinder the church from exerciſing that juriſdiction ſhe hath received from Chriſt, and therefore he puts himſelf out of all hopes of almoſt ever being reſtored. By the 12th canon concil. Antiocheni, "Si quis a proprio epiſcopo depoſitus, presbyter vel diaconus, vel epiſcopus a ſynodo, auſus fuit, imperatoris auribus moleſtiam exhiberi, cum oporteat ad majorem ſynodum converti, et jus quod ſe habere putat ad plures epiſcopos referre, eorumque examinationem et judicium ſuſcipere: qui itaque his contemptis imperatori moleſtus fuerit is nulla venia dignus, neque ſui defendendi locum habeat, nec reſtitutionis futuræ ſpem expectet."

No miniſterial communion with depoſed miniſters.

A depoſed miniſter applying to the civil magiſtrate for repoſition, not to be reſtored

Differences between deprivation, depoſition, and degradation

§ 18. By deprivation, a miniſter is removed only from his particular charge, and loſeth the benefice, as was done againſt the miniſters of Linlithgow and Bathgate, by the ſynod of Lothian in May 1660; but inſtances of this kind are rare. By depoſition, a miniſter is depoſed *ſimpliciter* from both office and benefice. This church doth not make that diſtinction, which the canoniſts do, betwixt depoſition and degradation: for they ſay, that depoſition is pronounced, verbally, by his ſuperiors removing him from his office, but in degradation, the enſigns and veſtments of the ſeveral degrees of orders he had been inveſted with, are pulled off him, and thereafter his perſon is delivered to the civil magiſtrate, to be puniſhed for his crimes.

Prayer before depoſition or repoſition.

§ 19. The cuſtom of this church is, that when they enter upon a proceſs of depoſition, the name of God is ſolemnly called upon for light and direction. Solemn prayer

er is likewise made before they enter upon the grounds for reponing of deposed ministers. The act of deposition runs in this or the like form: At the which day, anent the summons and complaint pursued before the presbytery of at the instance of against minister at mentioning, &c. and anent the citation, &c. to have compeared, &c. to have answered to the said complaint given in against him, and the samen being proven, to have heard a sentence of deposition, or such other censure given and pronounced against him, by authority of the said presbytery, as he should be found to deserve, conform to the acts and practice of this church, observed in the like cases, or else to have alledged a reasonable cause in the contrary; with certification, if he failed, the said presbytery would proceed, and do therein as they should find just. Which summons being oft and divers times called, &c. pursuers present and compearing, the said defender absent; the said presbytery having considered the articles of the said summons and complaint; and being well and ripely advised therewith, they found the same relevant by the acts and practice of this church to infer deposition; as also, they found the articles of the said complaint sufficiently proven, by the depositions of several famous witnesses, lawfully summoned, solemnly sworn, purged and interrogate thereupon. That, &c. (here narrate the particular things found proven) as the depositions of the said witnesses extant in process, bear; and therefore the said presbytery did by their vote, depose the said likeas they hereby do, in the name of the Lord Jesus Christ, the alone King and Head of his church, and by virtue of the power and authority committed by him to them, actually depose the said from the office of the holy ministry, prohibiting and discharging him to exercise the same, or any part thereof, in all time coming, under the pain of the highest censures of the church. Extracted, &c. The sentence of suspension runs in this form: They do suspend the said from the exercise of his ministry till a definite time, prohibiting him to exercise the same during the said space, till he be orderly reponed thereto, under the pain of deposition. The Assembly August 5th, 1648, considering, that according to the antient order and practice of this kirk, the censures of suspension and deposition are both

And the form of acts of deposition and suspension.

No deposed or suspended minister is to intromit with the benefice.

"ab officio et beneficio," therefore they discharge deposed or suspended ministers to exercise any part of the ministerial calling, or intromit with the stipend, under pain of excommunication to the deposed minister, and of deposition to the suspended. See also act of Assembly Dec. 18. 1638, sess. 14.

For what probationers are to be censured.

§ 20. By the 3d article of the 10th act of Assembly 1694, if probationers malverse in doctrine or conversation, they shall be accountable to and censurable by presbyteries; and if they refuse subjection, or prove contumacious to such censures, whether of suspending or recalling their licence, intimation thereof shall be made to the church judicatures where they reside or haunt, that so none may employ them to preach.

When the Assembly only can repone and what judicature can repone.

§ 21. By the act of Assembly 2d August 1642, ministers deposed for the public cause of reformation, and transgressing the order of this kirk, shall not be suddenly received again to the ministry, till they first evidence their repentance both before their presbytery and synod, and thereafter the same be reported to the General Assembly. The Assembly 12th August 1644, considering that sentences of superior judicatures should stand effectual, till they be taken away by themselves, therefore synods are discharged to repone ministers deposed by Assemblies, and presbyteries from reponing any minister deposed by either.

He cannot be restored to his former parish, nor yet to that of another deposed for the same fault.

By act of Assembly 13th February 1645, it is ordained, that no minister deposed shall be restored again unto that place where formerly he served, as being a thing prejudicial to the congregation, and derogatory to the weight of that sentence of deposition, and it being almost impossible that ever he can prove useful in that parish again. See the form of process on this head. By act of Assembly August 12. 1648, it is enacted, that no minister deposed for being an enemy to the government of this church, when it shall fall out, that he be put in a capacity of readmission to the ministry, shall enter into the congregation of any other minister, who also hath been deposed for that same fault. By the 53d article of the French church discipline, ministers who have been deposed for crimes which deserve signal punishment, or that bear marks of infamy, cannot be restored to their office, what acknowledgement soever they make. And as for other less faults,

Ministers deposed for horrid crimes not to be reponed.

after

after due acknowledgement made, they may be reſtored by the national ſynod, to ſerve in another church, and not otherwiſe, which agrees with theſe acts of our Aſſemblies juſt now cited.

How a great many miniſters were reponed againſt ſentences paſt during the late diviſions.

§ 22. By the 13th act of Aſſembly 1690, all ſentences paſt againſt any miniſter, hinc inde, by any church judicature, upon the account of the late differences among Preſbyterians from the year 1650, till the reintroduction of Prelacy, are declared to be of themſelves void and null, to all effects and intents.

TITLE V.

Of Sentences and their Reviews, of Declinatures, References and appeals.

Severe kinds of ſentences.

§ 1. JUdicial ſentences are either interlocutors, that is, a ſentence intermediate between the dependence and termination of proceſſes; or they are definitive, that is, they terminate proceſſes. And theſe are either abſolvitures, whereby the defender is freed and aſſoilzied from the concluſion of the libel or proceſs, or they are condemnatory, whereby the concluſion of the proceſs is found juſt and true againſt the defender; or they are mixed, whereby the defender is abſolved from ſome part of the concluſion of the proceſs, and is condemned in other parts thereof.

Sentences muſt be written before they be pronounced.

§ 2. The moderator of no judicature ought to give forth their ſentence, till the ſame be firſt put in writing, and then he is to order the clerk to read it in preſence of all parties. Thus no judicature can be in the leaſt wronged by any clerk's unfaithfulneſs or omiſſion.

In doubtful caſes it is faſeſt to abſolve.

§ 3. When it is doubtful what ſentence ſhould be paſt, it is the ſafeſt ſide, and the leaſt error, either to drop the proceſs for the time, or elſe to abſolve the defender, conform to that maxim in law, "Satius eſt impunitum relinquere facinus nocentis, quam innocentem damnare, l. 5. d. de pœn," for in abſolving the guilty there is but an omiſſion, whereas in condemning the innocent there is committing of iniquity and injuſtice.

Concluſion of the cauſes.

§ 4. Before a judicature can think to paſs a ſentence, parties being firſt fully heard, muſt cloſe what they have to ſay, and after they have concluded their defences and anſwers, then the judicature begins to adviſe what ſentence

to

to pronounce; and ſeeing the purſuer ſpeaks firſt by his libel, the defender is allowed to be the laſt ſpeaker.

Some ſins not to be tried publicly.

§ 5. When faults are ſingular and monſtrous, it is the laudable practice of judges, to order the puniſhment and trial of ſuch crimes in private; I am ſure, to acquaint the people of ſome unnatural ſins, whereof they had never heard, were but a ſcandalous and pernicious inſtruction. See the 51ſt art. 1. cap and 10th and 11th art. of the 5th cap. of the French church diſcipline.

Nullity of ſentences.

§ 6. Sentences are in themſelves null, when pronounced againſt the general acts of the church, or by an incompetent judge, ſuch as the ſentences of kirk ſeſſions againſt miniſters, or even by preſbyteries and ſynods, when the proceſs is carried and admitted before their ſuperior judicatures.

The nature, uſe, and end of reviews, and who can review.

§ 7. When the party neglects to uſe the ordinary remedy of appeal, he is allowed (where the ſentence is palpably gravaminous) to purſue a review thereof before a ſuperior judicature. They are like reductions, and ought to be ſo libelled, calling the parties and judge to produce what is craved to be reviewed. They are not much in uſe with us, and if they were, ſome ſelf-will'd and litigious perſons would take too much encouragement from it. Aſſemblies, from which their lies no appeal, may review or recal their own ſentences, on ſome new or extraordinary diſcovery. But inferior judicatures, from which parties may appeal, are not to determine but to refer the deſired review or reduction to their ſuperior judicature. If a party ſhall omit to propone a competent and proper defence, with a fraudulent and vexatious intention to protract and reſume debates; in that caſe he ought not to be heard in his making thereof out of due time and order. But to hear emergent and new-diſcovered defences ſince the concluſion of the cauſe, is but juſt.

The magiſtrate is to interpoſe his authority for getting obedience to church cenſures.

§ 8. In the latter part of the 23d act parl. 1693, it is ſtatute, that the Lords of their Majeſty's privy council, and all other magiſtrates, judges, and officers of juſtice, give all due aſſiſtance, for making the ſentences and cenſures of the church, and judicatures thereof to be obeyed, or otherwiſe effectual as accords.

§ 9. Declinatures are "ante latam ſententiam definitivam;" but appeals are made from, and after that ſentence

Theſe

Difference between references and appeals; when warrantably made, and when not.

These declinatures are of two sorts, the first unwarrantable, when a judicature is declined as having no authority, as if a minister should decline his own presbytery, or the other superior judicatures of the church to be his lawful judges, which is a higher degree of contumacy than that which follows upon non-compearance, and may be warrantably censured with deposition by the 5th act of parliament 1690. There is a warrantable declinature, when a judicature is declined as having committed injustice in some interlocutory sentence. There is likewise a warrantable declinature, which may be made against particular members, who are related to the party by consanguinity or affinity, nearer than a cousin german, or who have behaved themselves as parties in the cause. It is just now said, that appeals are properly made from definitive sentences, but they are likewise made from interlocutory sentences, when they contain such damage to the party, whereof no reparation can be expected, from the definitive sentence that is to ensue. Thus, Paul's appeal was just, Acts xxv. 9. for although his accusers could not prove their libel against him, yet his judge did not absolve him, but partially and unjustly remitted him to the judgement of his false and malicious accusers.

What an appeal is; its end.

§ 10. *Appellatio* is by lawyers said to be "Iniquitatis "sententiæ querela, a minore judice ad superiorem pro- "vocans;" the design of appeals is to redress wrongs done by the iniquity, unskilfulness, or precipitancy of judges.

The effect of an appeal, and how it sists execution.

§ 11. As to the effect of appeals, "non fortiuntur ef- "fectum suspensivum sed devolutivum tantum," and consequently resolve only in the nature of protests for remeid of law against a sentence pronounced by the Lords of session, and not in the nature of suspensions. By the last article, cap 5. act. 11. assem. 1707, an appeal being made by parties, should sist the execution of the sentence appealed from, only while the appeal is duely and diligently prosecute, and may thereby be determined, otherwise not; unless the judicature appealed to, receive the appeal and take the affair before them: and in that case the judicature appealed from is to sist till the appeal be discussed.

The manner of making appeals, and to whom made.

§ 12. By the act of Assembly August 30. 1639, appellations are discharged to be made by leaping over either presbytery or synod, except it be after the synod is past, and

and immediately before or in the time of the ſitting of the General Aſſembly. The Aſſembly 1648, ſeſſ. 30. orders thus, that where the appeal after ſentence is not ready to be given in, the party ſhall proteſt for liberty to appeal, and accordingly, within ten days, give in his written appeal to the judicature or moderator thereof, otherwiſe it falls; which order and method is further cleared by the 8th act of Aſſembly 1694, whereby it is appointed, that verbal appellants give in their ſubſcribed appeals, within ten days to the clerk of the judicature appealed from, (notwithſtanding the judicature may be up before the time) and alſo intimate the ſame to the moderator, by leaving with him an authentic copy thereof, with the reaſons of the ſame, to be regiſtered by the clerk, and ſummons direct thereupon againſt parties defenders, and extracts thereof, with the citation foreſaid, are to be produced by the appellants at the diſcuſſing thereof, declaring that any appeals or inſiſtings thereupon, otherwiſe made, ſhall be rejected.

When an appeal is to judged deſerted.

§ 13. When the judicature *ad quem* meets, the party appealed, and oftentimes the judge *a quo*, craves that the appellant may be called, and if he appear not, the appeal is holden as deſerted; in which caſe *firmatur ſententia*. If appellant fail, then to inſiſt, it *ipſo facto* falls, becomes void, and the ſentence of the judicature appealed from is to be put in execution. See the Form of Proceſs on this head enacted 1707. Unleſs the appellants ſend full inſtructions and documents for the neceſſity of their abſence. See cap. 9 art. 9. French church diſcipline.

How parties are ſifted by bills and references.

§ 14. By the act of Aſſembly Auguſt 3. 1643, it is appointed that all bills whatſoever of particular concernment, whereunto all parties having intereſt are not cited, ſhould be rejected. As alſo, that they be firſt preſented to the inferiour judicatures of the kirk, who may competently conſider of them, and from them, be orderly *et gradatim* brought to the Aſſembly, and references are to be made by the inferior to the immediate ſuperior judicatures in the ſame manner. Likewiſe upon a reference made and intimate, all parties preſent are thereby cited, *apud acta*, to the judicature referred unto: But if abſent, the clerk muſt be ordered to direct ſummons againſt them, which if omitted, the reference cannot be received.

§ 15.

§ 15. When an appeal is brought from the kirk-seſſion to the preſbytery, they are to conſider, whether the cauſe is of that nature, as it behoved at length to come to the preſbytery, by the courſe of diſcipline, before the final determination thereof: as, if it be in a proceſs of alledged adultery or ſuch like; in which caſe, they may, to ſave themſelves time, fall upon conſideration of the affair without inſiſting upon the *bene* or *male appellatum*, even tho' it ſeem to be propoſterouſly appealed. But if the cauſe be ſuch, as the kirk-ſeſſion are the competent and proper judges of, to its ultimate deciſion, and if there hath no cauſe been given by the ſeſſion, through tranſgreſſing the rules of an orderly proceſs, or by the incompetency of the cenſure, the preſbytery is not to ſuſtain the appeal; and if they do not ſuſtain it, but find the appellants to have been malicious, litigious, or precipitant, then they are to inflict ſome cenſure, ſuch as reproof before the preſbytery, or appoint them to acknowledge their precipitancy before their own ſeſſion, and that beſides remitting the proceſs to them. If the appeal to be ſuſtained, and yet upon proceeding in the cauſe, the preſbytery find the appellant cenſurable, they are to order him to be cenſured accordingly: but if they find, that the kirk ſeſſion hath unwarrantably proceeded, either to the contributing to the raiſing of a ſcandal, or inflicting a cenſure without a ſufficient cauſe, they are then not only to abſolve the appellant, but to take proper ways for vindicating his innocence: yet ſo as not to weaken the kirk-ſeſſion's authority; for which end they may give that ſeſſion ſuitable inſtructions and rules to walk by, or private admonition, or to call for a viſitation of their ſeſſion regiſter. See that forecited Form of Proceſs, Aſſembly 1707.

When the *bene* or *male-appellatum* is to be diſcuſſed

When the appeal is not to be ſuſtained.

When the appeal is to be ſuſtained.

TITLE VI.

Of the Order of Proceeding to Excommunication.

§ 1. IF a guilty perſon continue in that condition mentioned tit. 1. of this book, or lie under the cenſure of the leſſer excommunication for a conſiderable time, after intimation thereof hath been made, both in the congregation where it was inflicted, and alſo in that to which he belongeth, and yet be found frequently relapſing in theſe vi-

When to proceed from the leſſer to the higher excommunication, and grounds for both.

ces he was cenſured for, it may be conſtructed ſuch a degree of contumacy, and ſo aggravate the crime as to found a proceſs for the cenſure of the higher excommunication, which is to be inflicted or not, as may moſt tend to the reclaiming of the guilty perſon, and edification of the church. Where there is no obdurate contumacy, the leſſer excommunication needs only have place. Again, where no ſcandalous practice hath been proven, only there is a ſimple contumacy following by not appearing, in that caſe, the leſſer excommunication is length enough. But if the ſcandal be of an heinous nature, and that it is ſpreading and infectious, as in hereſies or ſchiſm in the church, in which caſes, contumacy is to be proceeded againſt.

Every error or difference in judgment not ſufficient ground for excommunication.

§ 2. Yet every error or difference in judgement about points wherein learned and godly men may differ, and which ſubverts not the faith, nor is deſtructive to godlineſs, or when perſons, out of conſcience, do not come up to the obſervation of all theſe rules, which are or ſhall be eſtabliſhed by authority for regulating the outward worſhip of God, and government of his church, the cenſure of excommunication ſhould not be inflicted for ſuch cauſes. See Durham on ſcandal. The letter from the Aſſembly of divines at Weſtminſter, with the anſwer of our General Aſſembly 1645.

How the preſbytery proceeds with perſons preſent or abſent in order to this cenſure.

§ 3. The kirk-ſeſſion having brought the proceſs to the leſſer excommunication, before they proceed further, they are by a reference to lay their whole proceeding in writ before the preſbytery, who finding them to have orderly proceeded, and that the leſſer excommunication is not ſufficient, they are to cauſe cite the ſcandalous perſon. If he appear, and deny the ſcandal alledged and libelled, then they are to lead probation as in other caſes. If he appear not, then the citation is to be renewed till he hath got three.

After three ordinary citations, three public admonitions.

§ 4. If he contemn theſe three citations, then he is to be admoniſhed out of the pulpit, to appear and ſubmit three ſeveral Sabbaths; and a preſbytery diet ſhould intervene betwixt every one of theſe admonitions. By theſe admonitions intimation is to be made, that the preſbytery will proceed to inquire into the guilt, although the delinquent be abſent, and threatning him with the higheſt cenſure of the church, if he continue impenitent; and therefore the

miniſter

minister is gravely to admonish the party present or absent to repent and submit himself to the discipline of the church.

After three admonitions, follow three public prayers.

§ 5. If after all, the person continue impenitent or contumacious, the presbytery appoints the minister to pray for him publicly in the congregation, and he is to exhort them to join with him in prayer, that God would deal with the soul of the impenitent, and convince him of the evil of his ways. Which prayers of the church, are to be put up three several Sabbath days, a presbytery intervening betwixt each prayer.

Edict for excommunication.

§ 6. The scandalous person still continuing impenitent, and making no application or submission, the presbytery is then to appoint the minister to intimate their resolution to proceed upon such a Sabbath as they shall name for pronouncing that dreadful sentence, unless either the party, or some for him, signify some relevant ground to stop the procedure; that so, upon the congregation's tacite consent and acquiescence, the sentence may have its due weight and intended effect.

The reason of this slow procedure.

§ 7. All these slow and several steps of the church's proceedings to this high censure, do shew their tenderness towards their lapsed brother, their earnestness to have him reclaimed, and also to create a greater regard and terror of that dreadful censure, both in the party and all the people. Let not those who deserve it, or upon whom it hath been orderly and justly inflicted, mock and say, *parturiunt montes*, &c. for whatsoever the church shall so bind on earth, our Lord hath said it shall be bound in heaven, Matth. xviii 18. and this censure is like a seal to all the threatnings of God in his word, which shall verily be execute against impenitent sinners.

The ministers behaviour before he pronounce the sentence.

§ 8. The day being come, the minister is to preach a sermon suited to that solemn occasion, concerning the nature, use, and ends of church censures; Then, after the ordinary prayers and praises of the congregation are performed, the minister is to narrate all the steps of the process, shew the obstinate impenitency of the scandalous person, and that now there remained only that mean of cutting him off from the society of the faithful. Then he is to desire the congregation to join with him in prayer, that God would grant repentance to the obstinate person, would

graciously bless his own ordinance, to be a mean for reclaiming him, and that others may fear.

The form of the sentence of excommunication.

§ 9. Then immediately after prayer that terrible sentence is to be pronounced, in these or the like words, speaking to him, in the second person, if present, and of him, in the third person, if absent. Whereas thou N. hast been by sufficient proof convicted of (here mention the sin) and after due admonition and prayer, remainest obstinate, without any evidence or sign of true repentance: Therefore, in the name of the Lord Jesus Christ, and before this congregation, I pronounce and declare thee N. excommunicated, shut out from the communion of the faithful, debars thee from their privileges, and delivers thee unto Satan for the destruction of thy flesh, that thy spirit may be saved in the day of the Lord Jesus

What is meant by delivering to Satan.

§ 10. Why the apostle, 1 Cor. v. 5. expresses excommunication by delivering to Satan may be for this, among among other reasons, that Satan is called the god of this world, as world is taken in opposition to the church of God, so that delivering to him implies no more than that Matth. xviii 17. if he neglect to hear the church, let him be to thee as an heathen man and publican, thereby letting us know how dreadful a thing it is to be shut out from the ordinary means of grace and salvation, and exposed to the temptations of our grand adversary the devil.

When pronouncing the sentence may be stopped.

§ 11 If after prayer, or before pronouncing of that sentence, the scandalous person make any public signification of his penitency, and of his desire to have the censure stop, the minister may, upon any apparent seriousness in him, delay pronouncing him excommunicated, upon his public engagement and promise to appear before the presbytery at their next meeting, of which the minister is to make report, and the presbytery is thereupon to deal with the scandalous person as they shall see cause.

The effects of this sentence.

§ 12. After the pronouncing of this sentence, the minister is to warn the people of the effects thereof; such as, that they hold that person to be cast out of the communion of the church, and therefore they are to shun all unnecessary converse with him; nevertheless excommunication dissolveth not the bonds of civil or natural relations. By the act of Assembly 1596, revived Assembly 1638, act. 16. sess. 23. such are appointed to be excommunicated as

will

will not forbear the company of excommunicated perſons. By the 10th of theſe canons called *apoſtolical*, "Si quis "etiam domi cum excommunicato ſimul oraverit, is pariter "excommunicetur." By Aſſembly 1643. ſeſſ. ult. and Aſſembly 1648, art. 13. ſeſſ. 38. if a miniſter haunt the company of excommunicated perſons, he ſhall be ſuſpended for the firſt fault, and deprived for the ſecond, unleſs he have licence from the presbytery, or elſe the excommunicated perſon be *in extremis*. No civil penalty, ſuch as eſcheat of moveables or caption, doth now follow upon this ſentence, ſo that the liberty and eſtates of church members are not endangered by it, nor do they depend upon church men. But upon a presbytery's repreſentation to the privy council, againſt perſons that are contumacious, ſuch may not expect to enjoy their places, or be intruſted with any, as the laſt act made againſt profaneneſs in King William's reign doth inſinuate. By Jam. VI. parl. 11. cap. 27. excommunicate perſons are to be charged by the miniſter to depart from the church in time of miniſtration of ſacraments and prayer, and not to diſobey, under the penalties therein mentioned.

Concluſion by prayer, praiſe, and pronouncing the bleſſing.

§ 13. The miniſter is to conclude this cenſure with prayer to this purpoſe, that God, who hath appointed this terrible ſentence for removing of offences, and reducing of obſtinate ſinners, would ratify in heaven, what, in his name, and by his warrant hath now been done on earth, and that the ſhuting him out of the church may fill him with fear and ſhame, break his obſtinate heart, and be a mean to deſtroy the fleſh, and recover from the power of the devil, that his ſpirit may yet be ſaved, and alſo that others may be ſtricken with fear, and not dare to ſin ſo preſumptuouſly, or contemn the authority and voice of his church. See Knox's forms prefixed to the old pſalms. Then the congregation is to be diſmiſſed with the bleſſing, after ſinging the laſt part of the 101ſt Pſalm.

The difference betwixt the greater and leſſer excommunication.

§ 14. The 4th art. cap. 30. of our Confeſſion of Faith ſaith, that for the better attaining the ends of church cenſures, the officers of the church are to proceed by admonition and ſuſpenſion from the ſacrament of the Lord's Supper for a time, and by excommunication from the church. The difference then betwixt theſe two cenſures is, ſuſpenſion from the Lord's Supper, which imports, that the

the perſon ſo cenſured is in imminent danger of being excommunicated and cut off from the church; but before that heavy and finiſhing ſtroke be inflicted, there are further means to he uſed, ſuch as prayers and admonitions, in order to his reclaiming, 2 Theſſ. iii. 6. 14. 15. "Now "we command you brethren, in the name of our Lord "Jeſus Chriſt, that ye withdraw yourſelves from every "brother that walketh diſorderly: and if any man obey "not our word by this epiſtle, note that man, and have "no company with him, that he may be aſhamed, yet "count him not as an enemy, but admoniſh him as a bro-"ther." Whereas, when a perſon is cut off by that high cenſure, he is to be looked on as a heathen man, Matth. xviii. 17. Upon which the church ceaſeth to be his reprover, they giving him over for dead or deſperate, and will adminiſter no more of the medicine of church diſcipline unto him, 1 Cor. xii. 13. "For what hath the church "to do to judge them that are without? do not they judge "them that are within? but them that are without, God "judgeth."

Summar excommunication, what, and when to be inflicted.

§ 15. Perſons guilty of relapſe in adultery, or who are often guilty of other groſs ſcandals, are to be more ſummarily excommunicate than in ordinary proceſſes, both for the heinouſneſs of the ſin, and for terror to others. See ſeſſ. 38. aſſem. 1648. There is no excommunication abſolutely ſummary, that is, without previous citations, admonitions and prayers, but it is comparatively ſummary, becauſe they are not firſt ſuſpended, as in ordinary church procedures againſt ſcandalons perſons. I am ſure, where there is no obdurate contumacy, but on the contrary, edifying ſigns of true repentance, to ſuch *ſinus eccleſie ſemper patet:* for the repentance of the greateſt ſinners is more edifying and grateful than their excommunication, and if the holy One of Iſrael, who is abſolute and ſovereign in beſtowing of his mercy and grace to whom and when he will, ſhall think fit, by giving unfeigned repentance to that nottour atrocious ſinner, to ſignify his forgiving of him, and receiving him into his favour; how dare any church upon earth preſume to deliver ſuch a perſon unto Satan.

§ 16. In caſe the excommunicate perſon continue obſtinate, after the ſentence of the preſbytery is intimated in all

all the kirks within their bounds, they are to give an account thereof to the ſynod, who are to appoint intimation thereof to be made in all the kirks of their bounds; and if need be, the ſynod is to bring the caſe to the Aſſembly, that the ſentence may be intimate through all the churches of the kingdom, Aſſem. 1704. ſeſſ. 13. Aſſem. 1648, Auguſt 10. Only let this be remembred, that if he come to be abſolved, juſtice be done him, in cauſing the abſolution be intimate, where-ever the excommunication had been, ſo the plaiſter will be proportioned to the ſore. Intimation of the ſentence of excommunication and abſolution.

§ 17 There is in the canon law a church cenſure which they call *interdictum*, by which they excommunicate whole kingdoms and provinces for the fault of ſome, whereby they make the innocent ſuffer with the guilty, through the forbidding the public exerciſe of God's worſhip in that kingdom, place, or province They have a particular *interdictum* by which they excommunicate a number of perſons ſpecially deſigned. By the firſt of theſe the inhabitants are only affected and reached with its cenſure during their abode or reſidence in the place interdicted. But the particular *interdict* doth reach and follow the particular perſons thereby cenſured, where-ever they ſojourn. Interdictum local and particular.

§ 18. Calderwood, in his hiſtory p. 205. tells us, that anathematization is a cenſure of an higher degree than excommunication, but the reformed churches generally eſteem excommunication to be "ſeveriſſima diſciplina, & "ultimum fulmen eccleſiæ," in ſect. 16. art. 1. of the directory for church government, as it was printed anno 1647, to be examined by the Aſſembly, it is ſaid, excommunication is a ſhutting out of a perſon from the communion of the church, and it is the greateſt and laſt cenſure. And, pray, what can a church do more? or, what have they to do more with a perſon ſhut out of their communion? The anathematization among the Canoniſts hath no other effects, but is the ſame upon the matter with their greater excommunication; only, when the ſame is inflicted with a number of more ſolemnities and formalities, becauſe of that parade, it is then called *anathematization*. And we find by Knox's forms, that he uſeth the words *excommunicated* and *accurſed*, as ſynonymous or equipollent: ſee the Form of Proceſs both on this and the ſubſequent title, Aſſem. 1707. Anathematization, excommunication, and accurſing are ſynonymous.

TITLE

TITLE VII.

Of the Order of proceeding to Absolution.

The old and present method of proceeding to absolution.

§ 1. BY the manuscript acts of Assembly at Edinburgh, March 1569, persons excommunicated for their offences, in order to their absolution, shall stand bare-headed at the kirk-door till prayers and singing be ended, and then enter the kirk, and sit at the public place of repentance bare-headed all the time of the sermon, and again depart before the last prayer, which is agreeable to Knox's forms, concluded anno 1567, and ordered to be printed by Assembly 1571, and is not disagreeable to the primitive practice of the church. But now if, after excommunication, the signs of repentance appear in the person excommunicated, such as godly sorrow for sin, as having thereby incurred God's heavy displeasure, occasioned grief to his brethren, and justly provoked them to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God, with a humble desire of recovering peace with God and his people; all which the presbytery being satisfied with, they give warrant for his absolution: but in order thereto, he is to be brought before the congregation, and there also make free confession and express sorrow for his sin, call upon God for mercy in Christ, seek to be restored to the communion of the church; and he must promise, through the Lord's strength, new obedience, and more holy and circumspect walking. Which appearance before the congregation, shall be as often as church judicatures shall find may be for edification and trial of the professing penitent's sincerity.

Absolution in extremis.

§ 2. A minister may warrantably, without licence from the presbytery, haunt the company of excommunicate persons *in extremis*, as is said, tit. præc. And if he shall then find in the dying person true signs of repentance, what is there to forbid his administrating the comfortable sentence of absolution to him, seeing it is due to the signs of his repenance, and his dying condition cannot admit of longer delay. But that ministers might have better warrant, and the fears of dying penitents be more easily removed, I wish there were some church act expressly authorising

thorizing miniſters to abſolve perſons in ſuch circumſtances

§ 3. In the preceding title, there is an edict of excommunication mentioned, ſo, in like manner, and on the ſame ground, there ſhould be publiſhed an edict of abſolution, at leaſt a Sabbath before the ſame, that ſo the penitent may be reſtored to the apparent and tacit ſatisfaction of that congregation who had ſo conſented to his ſecluſion. Edict of abſolution.

§ 4. The day being come, the miniſter is to preach a ſermon ſuited to that occaſion: Then, after the ordinary prayers and praiſes of the congregation are ended, he is to call upon the profeſſed penitent, and make him declare, promiſe, and call upon God as above: thereafter he is to deſire the congregation to join with him in prayer to this purpoſe, that the Lord Jeſus Chriſt, who hath pronounced, that whoſoever by his miniſters is bound on earth ſhall be bound in heaven, and alſo that whoſoever is looſed by the ſame, ſhall be looſed and abſolved with him in heaven, would mercifully accept his creature this profeſſing penitent N. whom Satan of a long time hath held in bondage, ſo that he not only drew him to iniquity, but alſo ſo hardened his heart, that he deſpiſed all admonitions; for the which his ſin and contempt, they were compelled to excommunicate him from the ſociety of the faithful. But now ſeeing the Holy Spirit hath ſo far prevailed, that he profeſſeth repentance for his ſin, that it may pleaſe God, by his Spirit and grace, to make him a ſincere and unfeigned penitent: and for the obedience of the Lord Jeſus Chriſt unto death, ſo to accept of this poor returning ſinner, that his former diſobedience be never laid to his charge, and that he may increaſe in all godlineſs, ſo that Satan in the end may be troden under foot by the power of our Lord Jeſus, and God may be glorified, the church edified, and the penitent ſaved in the day of the Lord. The miniſter's behaviour and prayer before abſolution.

§ 5. After prayer, the ſentence of abſolution is to be pronounced in theſe or the like words. Whereas thou N. haſt been ſhut out, for thy ſin, from the congregation of the faithful, and haſt now manifeſted thy repentance, wherein the church reſteth ſatisfied; in the name of the Lord Jeſus Chriſt, before this congregation, I pronounce and declare thee abſolved from the ſentence of excommu- Sentence of abſolution & exhortation to the abſolved.

nication formerly denounced againſt thee, and do receive thee into the communion of the church, and the free uſe of all the ordinances of Chriſt, that thou mayeſt be partaker of all his benefits to thy eternal ſalvation. After this is pronounced, the miniſter ſpeaketh to him as a brother, exhorting him to watch and pray, or comforting him, if there be need, the elders embrace him, and the whole congregation holdeth communion with him as one of their own.

How the excommunicated are prayed for before abſolution.

§ 6. When the presbytery hath given warrant for abſolving the excommunicate perſon, he is thereupon materially abſolved, and therefore may be admitted to church worſhip, before he be actually and formally pronounced and declared ſuch. The church may pray for excommunicate perſons, unleſs they had certain knowledge, I mean very well grounded, that any of them had committed the unpardonable ſin, and that unto death, 1 John v. 16. Matth. xii, 31. 32. and when we do pray for theſe excommunicated whom we hope not to be ſo guilty, yet we do not pray for them as Chriſtians, or of our communion, but as if they were Heathens, for their converſation and repentance.

Concluſion of the abſolution

§ 7. The miniſter is to conclude the abſolution with prayer, thanking God, who delighteth not in the death of a ſinner, but rather that he ſhould repent and live, and magnifying the mercy of God through Jeſus Chriſt, in pardoning and receiving into his favour the moſt grievous offenders, when ever by his grace they unfeignedly repent and forſake their ſins: Thereafter the congregation is diſmiſſed with a bleſſing, after ſinging a part of ſome penitential Pſalm.

THE FORM of PROCESS IN THE JUDICATURES of the CHURCH of *Scotland*, With Relation to SCANDALS and CENSURES.

[Ratified and approved by act of Assembly 18th April 1707, sess. 11.]

CHAP. I.

Concerning Church Government, Discipline, Scandals, and Censures in general.

OUR Lord Jesus Christ hath instituted a government, and governors ecclesiastical in his house, with power to meet for the order and government thereof; and to that purpose, the apostles did immediately receive the keys from the hands of their Lord and Master Jesus Christ, and did use and exercise the same upon all occasions, and Christ hath from time to time furnished some in his church with gifts for government, and with commission to exercise it when called thereunto, and has promised his presence to be with them to the end of the world.

It is aggreable to, and founded on the word of God, that some others, besides these who labour in the word and doctrine, be church governors, to join with the ministers of the word in the government of the church, and exercise of discipline, and oversight of the manners of the people; which officers are called ruling elders: As also, that the church be governed by several sorts of judicatures, and one in subordination to the other, such as kirk-sessions, presbyteries, provincial synods, and general assemblies.

Church discipline and censures, for judging and removing of offences are of great use and necessity in the church, that the name of God, by reason of ungodly and wicked persons living in the church, be not

blaſphemed, nor his wrath provoked againſt his people, that the godly be not leavened with, but preſerved from the contagion, and ſtricken with fear, and that ſinners who are to be cenſured may be aſhamed, to the deſtruction of the fleſh, and ſaving of the ſpirit in the day of the Lord Jeſus.

Nothing ought to be admitted by any church judicature as the ground of a proceſs for cenſure, but what hath been declared cenſurable by the word of God, or ſome act of univerſal cuſtom of this national church agreeable thereto; and the ſeveral judicatures of this church ought to take timous notice of all ſcandals: But it is judged, that if a ſcandal ſhall happen not to be noticed in order to cenſure for the ſpace of five years, it ſhould not be again revived, ſo as to enter in a proceſs thereanent, unleſs it be of an heinous nature, or become again flagrant, but the conſciences of ſuch perſons ought to be ſeriouſly dealt with in private to bring them to a ſenſe of their ſin and duty.

Theſe aſſemblies or church judicatures before-mentioned have power to convene and call before them any perſons within their own bounds, whom the eccleſiaſtic buſineſs, which is before them doth concern, either as party, witneſs, or otherwiſe, and to examine them according to the nature of the affair, and to hear and determine in ſuch caſes as ſhall orderly come before them, and accordingly diſpenſe church cenſures.

If a perſon be charged with a ſcandal, who lives within the bounds of another pariſh, the kirk ſeſſion of the pariſh where that perſon reſides ſhould be deſired to cauſe cite that perſon to anſwer before the ſeſſion in whoſe bounds the ſcandal happened, and the ſame courſe is to be followed in ſuch caſes by the other judicatures of the church, ſeeing, for order's ſake, they ſhould not preſume to exerciſe their authority without their own bounds.

The miniſter of the word being an office above that of the ruling elder, cannot be liable to the cenſure of the kirk-ſeſſion, but to the ſuperior judicatures of the church.

CHAP. II.

Concerning the entering of Proceſſes, Citation of Parties and Witneſſes, and taking Depoſitions, and anent Fugitives from Diſcipline.

MEMBERS of kirk-ſeſſions are wiſely to conſider the information they get of ſcandals, and conſult with their miniſter thereanent, even before the ſame be communicate to others, that thereby the ſpreading

ſpreading of the ſcandal may be prevented, and it may be removed by private admonition, according to our Lord and Saviour's rule, Matth. xviii. 15. which, if amendment follow, is the far better way of gaining and recovering a lapſed brother, whereas the needleſs ſpreading of a ſcandal does ſometimes harden the guilty, grieve the godly, and is diſhonourable to religion.

When any buſineſs is moved in a church judicature, whether by information, petition, or otherwiſe, they are in the firſt place to conſider, whether the matter in its circumſtantial caſe be proper for them to enter upon, and whether it be orderly brought in, and proper for them to cognoſce and diſcuſs it themſelves, or prepare it for ſuperior judicatures, and ſhould endeavour to ſhorten their work as much as with the edification of the church they can, eſpecially as to the head of ſcandal, but ſtill on all occaſions the office bearers in the houſe of God are to ſhew all prudent zeal againſt ſin.

In proceeding in all cauſes, where there is any perſon or parties concerned, the judicature is to ſee, that before they proceed, theſe perſons or parties be duly ſiſted before them by a legal and timous citation in write, bearing its cauſe, either at the inſtance of a party complaining, or at leaſt by order of the judicature; and if they be reſiding within the pariſh, the ſame may be upon forty eight hours advertiſement, and the execution of the ſummons bearing its cauſe, and made before two or three witneſſes inſert, is to be returned by the beadle or officer in writing, and the perſons cited called at the door; and this is eſpecially to be obſerved by preſbyteries and other ſuperior judicatures of the church.

Sometimes it may be fit that the party be privately ſpoken to, before any citation be given, or proceſs begun, for their better gaining, in which caſe the miniſter is to exerciſe his own diſcretion, and take the concurrence of elders and others with him; but if the party cited as above, appear not, there ought to be a ſecond and then a third citation given by the order of the ſeſſions and preſbyteries, either perſonally, or left at their dwelling houſe, before the judicature declare the perſon contumacious, unleſs the party be cited to appear before a ſuperior judicature by reference or appeal, in which caſe there is not that need of ſo many citations, before the ſuperior judicature, the party having actually appeared before the inferior judicature; and being cited *apud acta* to appear before the ſuperior, and the ſame marked in the minutes, or having been declared contumacious before the cauſe was brought before the ſuperior judicature.

All citations *apud acta*, are peremptory, and if inſtructed, infer contumacy, if not obeyed.

If

If the perſon do not appear on the third citation, or upon a citation *apud acta*, and no relevant excuſe adduced and verified, though in that caſe he be cenſurable for contumacy, yet it may be fit the judicature proceed to take cognition, either by examining witneſſes upon oath, or by other documents of the verity of the ſcandals delated againſt him, before they cenſure him for contumacy.

If the party appear, then the moderator is to inform the perſon of the occaſion of his being called, and to give him, if deſired, a ſhort note in writing thereof, with the names of the witneſſes that are to be made uſe of.

There ſeems to be no need of accuſers or informers in eccleſiaſtic proceſſes, where the ſame are not raiſed at the inſtance of a party complaining formally, but the party, if cited by order of the judicature, is to anſwer the judicature in what is laid to his charge: yet ſo, that if the party cited be found innocent and acquitted, thoſe who informed the judicature, whether the party require it or not, ought to be noticed, for either their calumny or imprudence, as the judicature ſhall find cauſe.

If there be witneſſes to be made uſe of in the proceſs, a liſt of their names ought to be given to the defenders ſome time before, or at leaſt at their compearance, and the witneſſes ought to be timouſly cited to give evidence; and if they refuſe, after three citations given, and executions returned, may be proceeded with as contumacious, or if judged needful, after the firſt or ſecond citation, application may be made to the civil magiſtrate, that he may oblige them to appear.

Before the witneſſes be judicially examined, the accuſed perſon is to be called, and the relevancy of the libel diſcuſſed, and if the defender compear, he may object againſt any of them, and if the objection be relevant, and made evident to the judicature, the witneſſes are to be caſt, but a perſon's being the delator or informer, doth not hinder him to be a witneſs, except in the caſe where he formerly complained for his own intereſt, or of pregnant preſumprions of malice againſt the perſon accuſed.

Though there be no relevant objection, yet the witneſſes are ſolemnly to be purged of malice, bribe or good deed done or to be done, and of partial council.

The witneſſes are to be examined in preſence of the accuſed party, if compearing, and he may deſire the moderator to propoſe ſuch queſtions or croſs queſtions to the witneſſes, as may tend to his exculpation, which if the judicature think pertinent are to be propoſed; but no accuſed perſon is to interrupt the witneſſes, or ſpeak during the time of depoſition.

If

If the party accuſed do before probation offer grounds of exculpation to be proven by witneſſes, the moderator and clerk, if required, are to give warrant to cite the witneſſes upon the party's charges, the relevancy of the offered exculpation being firſt conſidered and ſuſtained by the judicature, and if the exculpation be fully proven as to the ſubſtance of the ſcandal, all further proof of the libel and accuſation muſt there ſiſt, and the defender is to be aſſoilzied, and if the libel be ſpecial as to the time and place of a fact, and the accuſed more pregnantly alledge and clearly prove *alibi*, but if the ſubſtance of the ſcandal be once ſuſtained and deponed upon, there can be no place for exculpation, unleſs it be as to ſome extenuating or aleviating circumſtances not contrary to, but conſiſtent with the depoſitions already taken.

If the witneſſes cannot ſubſcribe their names to their depoſitions, the clerk is to mark that they declare they cannot write, and the moderator is to ſubſcribe the ſame, whether they can ſubſcribe or not.

After the depoſitions are ended, the parties being removed, the members of the judicature at the ſame or ſome after diet thereto appointed, are to adviſe the cauſe, and there and then to reaſon the affair calmly, ſpeaking always to the moderator one after another, without interrupting one another, uſing no reflecting language to, or of one another, nor too long harangues or digreſſions.

If any perſon or perſons under proceſs for ſcandal abſcond, they ſhall, after being called before the judicature and not compearing, be cited firſt from the pulpit of the pariſh where the proceſs depends and where they reſide, and if they do not thereupon appear before the judicature before whom the proceſs depends, they are by order of the preſbytery to be cited from the pulpits of all the kirks within their bounds to compear before the preſbytery; and if they do not then compear, they are to be declared fugitive from the church diſcipline, and the ſame intimate in all the kirks within the bounds of the preſbytery, deſiring, that if any knows of the ſaid fugitives, they may acquaint the miniſter or elder of the bounds thereof, and the preſbytery are to ſiſt there until they get further notice of theſe perſons.

CHAP.

CHAP. III.

Concerning Swearers, Curſers, Profaners of the Lord's Day, Drunkards, and other Scandals of that nature.

IT may fall out that one ſingle act of drunkenneſs or breach of the Lord's day, diſobedience to parents, or of ſwearing, curſing, ſcolding, fighting, lying, cheating or ſtealing, may be clothed with ſuch circumſtances as may be a juſt ground of proceſs immediately, and even bring the perſons guilty under the cenſure of the leſſer excommunication, and ſuſpenſion from the benefit of the ſealing ordinances, and require their appearance in preſence of the congregation to be rebuked, before relaxation; but the weight of this is duely to be pondered, and church judicatures and members thereof are to conſider, whether private admonition of the perſons alledged and found guilty of the above ſcandals, if not cloathed with ſuch circumſtances of bringing them to the public, will tend moſt to edification, and proceed accordingly.

But ordinarily in all ſuch offences, the guilty, for the firſt fault, would be ſpoken to in private by the miniſter or an elder, and admoniſhed, and on promiſe from a ſenſe of guilt to amend, they may ſiſt there.

But if the perſon relapſe, he ſhould be called before the ſeſſion, and if found guilty, may be there judicially rebuked, where the ſeſſion on promiſe, from a due ſenſe of ſin, to amend, may again ſiſt.

But if the perſon amend not after that, the ſeſſion ſhould orderly proceed, unleſs repentance appear, and due ſatisfaction be offered, till they inflict the cenſure of the leſſer excommunication, and ſuſpenſion from the benefit of the ſealing ordinances, under which the cenſured are to lie till amendment and reformation.

With reſpect to ſcandals, the groſſneſs whereof makes it neceſſary to bring the perſons guilty oftener than once before the congregation, the rules preſcribed by the fourth act of the general aſſembly, *anno* 1704, are to be followed.

If the guilty perſons continue in this condition, or lie under the cenſure of the leſſer excommunication a conſiderable time, and yet be found frequently relapſing in theſe vices they are cenſured for, it may be conſtructed ſuch a degree of contumacy, and ſo aggravate the crime, as to found a proceſs of the cenſure of the higher excommunication, which is to be inflicted, or not, as may tend moſt to the reclaiming of the guilty perſon, and edification of the church.

CHAP.

CHAP. IV.

Concerning the Sin of Fornication, Adultery, and ſcandalous Carriage tending thereto.

IN delations about the ſin of uncleanneſs, it falls frequently out, that when the matter is put to the ſtricteſt trial, all that can be proven is but preſumptions of guilt or ſcandalous behaviour, and not the act of uncleanneſs, the ſame being a work of darkneſs; and therefore this ſhould oblige the kirk ſeſſion to be very cautious how to admit the public entering a proceſs without good warrant, where there is not a child in the caſe, unleſs the ſcandal be very flagrant.

Many of theſe actions which give occaſion to the raiſing a ſcandal of uncleanneſs, are ſuch as are not themſelves alone publicly cenſurable, but to be paſt by with a private rebuke of admonition.

Yet ſome of theſe actions which come under the name of ſcandalous behaviour, may be ſo laſcivious and obſcene, and clothed with ſuch circumſtances, as may be as offenſive as the act of uncleanneſs itſelf, and as cenſurable.

If a married woman whoſe huſband hath been notourly abſent for a conſiderable time, beyond the ordinary time that women uſe to go with child, be found with child, this alſo may give ground to a kirk ſeſſion for a proceſs againſt her; but in this caſe judicatures would be prudent in conſidering well all circumſtances, and whether or not the perſon hath been always of entire fame before, as alſo how the public fame now runs.

When an unmarried woman is known to be with child, the ſame gives ground to a kirk ſeſſion for a proceſs againſt her, and after ſhe is cited before the ſeſſion and appeareth, ſhe is to be interrogate who is the father of that child, and though in no other caſes the divulging of a ſecret may be very imprudent, and indeed the raiſing of a ſcandal, yet in this caſe where there is a child, whereby there is an undeniable ſcandal, and the keeping ſecret of the father a ground of greater offence, and of ſuſpecting many innocent perſons, if ſhe diſcover not the father, ſhe is to be looked upon as contumacious.

Prudence may ſometimes require that the perſon ſhe nameth to be the father of the child, be informed thereof, and ſpoke to privately, and if he deny the ſame, he is ſeriouſly to be dealt with to confeſs, but if he ſtill deny, then the ſeſſion is to cauſe cite him to appear before them.

In this proceſs when the delated father compeareth, he is to be in-

terrogate, and if he deny, he is to be confronted with the woman, and the presumptions, as particularly held forth as possible, and all along there should be private treating with him, in all meekness, charity, and seriousness, and if after all this he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as suspicious frequenting her company, or being *solus cum sola in loco suspecto*, or in suspect postures, and such like which he cannot disprove to the satisfaction of the session, may so lay the guilt upon him, as shew him, that there appears no other way of removing the scandal, but his appearance to be publicly rebuked therefor; if he will not submit himself to be rebuked as above, it perhaps may be more for edification that a true narrative of the case be laid before the congregation, and intimation given, that there can be no further procedure in that matter, till God in his Providence give further light, to sift there at the time, than that an oath be pressed, and upon refusal proceed to the higher excommunication; but if the person accused do offer his oath of purgation, and crave the privilege thereof, the presbytery may (if they shall judge it for edification and removing of the scandal) allow the same, which may be to this purpose. "I A. B. now under process before presbytery of for that sin of alledged to be committed by me with C. D. and lying under that grievous slander, being repute as one guilty of that sin; I, for ending of the said process, and giving satisfaction to all good people, do declare before God and this that I am innocent and free of the said sin of or having carnal knowledge of the said C. D. and hereby call the great God, the judge and avenger of all falsehood, to be witness and judge against me in this matter if I be guilty: and this I do, by taking his blessed name in my mouth, and swearing by him, who is the great judge, punisher, and avenger as said is, and that in the sincerity of my heart, according to the truth of the matter and mine own conscience, as I shall answer to God in the last and great day, when I shall stand before him to answer for all that I do in the flesh, and as I would partake of his glory in heaven after this life is at an end."

In taking this oath for purgation, all tenderness and caution is to be used, nor is the session to press any man thereto, but they are to deal with him and his conscience, as in the sight of God, and if he offer to give his oath, the judicature are to accept it or not as they shall see cause, and then to proceed to remove the scandal, with the advice of the presbytery, as may be most to edification; but this oath is not to be taken in any case but this, when the presumptions are so great, that they create such jealousy in that congregation and session, that nothing will remove the suspicion but the man's oath of purgation, and when his

his oath will probably remove the ſcandal and ſuſpicion, in all other caſes this oath is in vain, and ſo ſhould not be admitted, and never but by advice of the preſbytery.

This oath for purgation is to be taken either before the kirk-ſeſſion or preſbytery, or the congregations, as the preſbytery ſhall determine, and if the oath be taken before the ſeſſion or preſbytery, it is to be intimate to the congregation, that ſuch a perſon hath taken ſuch an oath, and the party may be obliged to be preſent in the congregation, and may be put publicly to own his purging himſelf by oath, and ſo be declared free from the alledged ſcandal.

After an end is made as above with the delated father, the woman is to be dealt with to give the true father, and if after all ſerious dealing and due diligence ſhe give no other, ſhe is to be cenſured according to the quality of the offence confeſſed by her, without naming the perſon delated by her, the judicature reſerving place for further cenſure upon further diſcovery.

If the woman who hath brought forth the child, doth declare ſhe knoweth not the father, alledging ſhe was forced, as in the fields by a perſon unknown, or any the like reaſon; in theſe caſes great prudence is to be uſed, the former behaviour of the woman exactly ſearched into, and ſhe ſeriouſly dealt with to be ingenuous, and if ſhe hath been of entire fame, ſhe may be put to it to declare the truth as if ſhe were upon oath, but not without the advice of the preſbytery, and no formal oath ſhould be taken, and if the woman confeſs ſhe was not forced, but doth not know the man, whether married or unmarried, the ſame cenſure is to be inflicted upon her, as in the caſe of adultery.

If a perſon doth voluntarily confeſs uncleanneſs, and if there be no child, and the caſe be brought to the kirk-ſeſſion, the ſeſſion is to inquire what preſumptions there are of the truth of the thing confeſſed, or what may have moved the perſon to make that confeſſion, whether it floweth from diſquietude of mind, or from ſiniſtrous deſign, as when a man ſuing to a woman for marriage is denied, and for revenge, or for to obtain his deſire, ſpreads the report that he hath been guilty with her, they are to be dealt with according as the preſumptions upon ſearch are found or not.

If it be found that there is no ground for the confeſſion, and that it is falſe, the perſon confeſſing is to be cenſured as defaming himſelf, and likewiſe as a ſlanderer of the other party; and with all, application is to be made by the ſeſſion to the civil magiſtrate, that he may be puniſhed according to law.

If there be need of witneſſes, the directions formerly mentioned (chap. 2.) are to be followed.

When perſons guilty of uncleanneſs live one in one pariſh, and another in another pariſh, the proceſs againſt them, and cenſures are to be before the ſeſſion of the pariſh where the woman liveth, or where the ſcandal is moſt notour.

If a ſcandal of uncleanneſs be committed where neither parties reſide, as if perſons having their fixed reſidence in one pariſh do commit uncleanneſs in another pariſh, or perhaps in the fields, or in the time of fairs or markets; in theſe caſes, they are to be proceſſed and cenſured where their ordinary abode is, except the place of their abode be at a conſiderable diſtance from the place where the ſin was committed, and the ſcandal be moſt flagrant where it was committed.

When there is a ſcandal of uncleanneſs whereof perſons are guilty living in different pariſhes, the ſeſſion where the ſin was committed is to acquaint the other ſeſſions where any of the perſons reſide, who are *ex debito* to cauſe ſummon theſe perſons to appear before that ſeſſion where the ſcandal is to be tried.

When a perſon is convict of ſcandal by a ſeſſion of another congregation than his own, and the cenſure of the leſſer excommunication is inflicted, the ſeſſion is to ſend an account thereof to that ſeſſion to which he belongs, but there is no need of any other ſentence of his own ſeſſion, to fix the cenſure on him, but only a public intimation thereof to be made in his own pariſh.

When a perſon is cenſured and abſolved from his ſcandal in another congregation than where he lives, he is to bring a teſtimonial of his abſolution, which is to be intimate to the congregation he lives in, if the ſcandal be alſo flagrant there; otherwiſe it will be ſufficient to intimate the ſame to the ſeſſion, and the ſame is to be done in the caſe of the profeſſion of repentance, where there has been a ſentence of the leſſer excommunication.

CHAP. V.

Concerning Appeals from a Kirk-ſeſſion to a Presbytery, &c.

ALL perſons who judge themſelves leſed by the procedure or ſentence of a kirk-ſeſſion may appeal to the presbytery, by declaring and proteſting at paſſing of the ſentence, and ſhould thereupon according to the eight act of the general aſſembly 1694, give in the appeal with the reaſons thereof in writ, to the moderator or clerk of the ſeſſion, within the ſpace of ten days after the time of appealing, and procure extracts thereof, and preſent the ſame to the next meeting of the preſbytery thereafter, if there be a competent time, at leaſt

leaſt ten days free betwixt the time of appealing and the meeting of the preſbytery; and ſhould then inſiſt in the appeal, wherein, if the appellant fail, the appeal *ipſo facto* falls and becomes null, and the appellant is to be held as contumacious, andproceeded againſt accordingly by the kirk-ſeſſion.

When an appeal is brought from a kirk ſeſſion to a presbytery, the preſbytery is to conſider, whether the cauſe is of that nature, as it behoveth at length to come to the preſbytery by the courſe of diſcipline, before the final determination thereof, as if it be in a proceſs of alledged adultery, or ſuch like, then the preſbytery, to ſave themſelves time, may fall upon the conſideration of the affair without inſiſting much upon the *bene* or *male appellatum*, though it ſeem to be preposterouſly appealed.

But if the cauſe be ſuch as the kirk ſeſſion are the competent and proper judges of, even to its ultimate deciſion, and if there hath been no cauſe given by the kirk ſeſſion, by their breaking the rules of an orderly proceſs, either by the courſe of the proceſs, or by the incompetency of the cenſure, the presbytery is not to ſuſtain the appeal.

If the presbytery do not ſuſtain the appeal, and find there hath been ſome fault, paſſion, or culpable miſtake in the appellant, the presbytery is to inflict ſome cenſure, ſuch as a reproof before the presbytery, or appoint an acknowledging of their precipitancy before their own ſeſſion or ſuch like, on theſe appealers they find to have been malicious and litigious, thereby to prevent unneceſſary appeals, and that beſides remitting back to the ſeſſion, to ſtand either to the cenſure of the ſeſſion, if it be inflicted already, or to ſiſt themſelves during the proceſs, if it be depending.

If the appeal be ſuſtained, and yet upon proceeding on the cauſe the presbytery find the appellant cenſurable, it is always to be minded, that whatever cenſure be inflicted to remove the offence he hath given to the presbytery, yet the appellant, if found guilty, is to undergo a cenſure, either before the kirk ſeſſion or congregation he belongs to, ſuch as the presbytery thinks he deſerves, elſe presbyteries will be always troubled with appeals.

If, on the other hand, on trial of the proceſs, the presbytery find the kirk ſeſſion hath unwarrantably proceeded, either in contributing to the raiſing of a ſcandal, or inflicting the cenſure without a ſufficient cauſe, and thereby the appellant leſed; the presbytery is not only to abſoilzie the appellant, but to take ſuch ways as may be proper and effectual to vindicate the appellant's innocency, and wipe off the ſcandal taken at him.

Herein the presbytery is to exerciſe great prudence, doing juſtice to

to the innocent, yet ſo, as not to weaken the kirk ſeſſion's authority in that congregation, if in juſtice it can be avoided.

But ſuch an emergent may very well occaſion the presbytery's giving the miniſter and elders of that ſeſſion ſuitable injunctions and rules to walk by, or private admonitions, or to call for a viſitation of their ſeſſion regiſter.

The ſame method is to be followed in appeals from presbyteries to ſynods, and from ſynods to general aſſemblies.

An appeal being made by parties, ſhould ſiſt the execution of the ſentence appealed from, only while the appeal is duely and diligently proſecute, and may thereby be determined, otherwiſe not, unleſs the judicature appealed to receive the appeal, and take the affair before them, and in that caſe the judicature appealed from is to ſiſt until the appeal be diſcuſſed.

CHAP. VI.

Concerning Proceſſes, which natively begin at the Kirk-ſeſſion, but are not to be brought to a final Determination by them.

THERE are ſome proceſſes, which natively begin at the kirk ſeſſion, which, for the atrocity of the ſcandal, or difficulty in the affair, or general concern, the ſeſſion having the opportunity of frequent meetings of the preſbytery to have recourſe there unto, do not determine of themſelves, ſuch as ſcandals of inceſt, adultery, trilapſes in fornication, murder, athieſm, adultery, witchcraft, charming, and hereſy and error, vented and made public by any in the congregation, ſchiſm and ſeparation from the public ordinances, proceſſes in order to the higheſt cenſures of the church, and continued contumacy; but the kirk ſeſſion having received information of ſuch groſs ſcandals, they are to weigh the ſame according to the rules and directions preſcribed them in proceſſes, which belong to their peculiar province, and if they find good ground for a proceſs, they are to deal with the perſon accuſed to confeſs, that which now cannot be hid nor amended, till ſatisfaction be made to the church, which when done, the ſeſſion is to refer the caſe, and ſend an extract of their procedure thereanent to the preſbytery.

When there is no confeſſion of the ſcandals above mentioned, the ſeſſion are not to proceed to lead probation by witneſſes or preſumptions, till an account of the matter be brought by reference to the preſbytery as aforeſaid, and the preſbytery do thereupon appoint the ſeſſion to proceed and lead probation; and after probation is led, the ſame is to be brought to the preſbytery, who may inflict what cenſure they ſee cauſe.

Sometimes

Sometimes it will fall out that the proceſs is ſo clear, as in a caſe of judicial confeſſion, that the kirk ſeſſion may ſummon the delinquent when before them *apud acta*, to compear before the preſbytery, without previous acquainting them thereof, but where there is any difficulty, the kirk ſeſſion ſhould inform the preſbytery, and take their advice, before a party be ſummoned before them.

When the party or parties compear before the preſbytery, if they confeſs and profeſs repentance for their ſin, then the presbytery having gravely rebuked, and ſeriouſly exhorted the party or parties, are to determine the cenſure, and preſcribe the time and place of the parties, their profeſſion of their repentance publicly in the church of that congregation where the proceſs began, the ſcandal being there to be taken away, or remit them to the ſeſſion, to ſtand either to the cenſure of the ſeſſion, to receive orders thereanent.

It is thought more fit that the delinquents be appointed to remove the ſcandal in the congregation, where the offence is moſt flagrant, eſpecially if they reſide there, rather than in the place where it was committed, if it be not public there, and that intimation of the removing thereof be made in other places, if the judicature ſhall find it needful.

When perſons cenſured for theſe groſſer ſcandals do apply to the kirk ſeſſion for relaxation, they may both be privately conferred with, and likewiſe their acknowledgements heard before the ſeſſion, but they ought not to be brought before the congregation, in order to their abſolution, nor abſolved, but by advice and order of the preſbytery.

CHAP. VII.

Concerning Proceſſes againſt Miniſters.

ALL proceſſes againſt any miniſter, are to begin before the preſbytery to which he belongeth, and not before the kirk ſeſſion of his own pariſh.

The credit and ſucceſs of the goſpel (in the way of an ordinary mean) much depending on the entire credit and reputation of miniſters, their ſound doctrine and holy converſation, no ſtain thereof ought lightly to be received, nor when it comes before a judicature ought to be negligently inquired into, or when found evident, ought to be ſlightly cenſured.

And becauſe a ſcandal committed by a miniſter hath on theſe accounts many aggravations, and once raiſed, though it may be found

to

to be without any ground, yet it is not eaſily wipt off; therefore a preſbytery would exactly ponder by whoſe information and complaint it comes firſt before them, and a preſbytery is not ſo far to receive the information, as to proceed to the citation of a miniſter, or any way begin the proceſs, until there be firſt ſome perſon, who under his hand gives in the complaint with ſome account of its probability, and undertakes to make out the libel. 2*do*. Or at leaſt do, before the presbytery, undertake to make it out under the pain of being cenſured as ſlanderers. Or, 3*tio*, That the *fama clamoſa* of the ſcandal be ſo great, as that the presbytery for their own vindication ſee themſelves neceſſitate to begin the proceſs, without any particular accuſer: but the presbytery in this caſe would be careful, firſt, to inquire into the riſe, occaſion, brochers, and grounds of this *fama clamoſa*.

All Chriſtians ought to be ſo prudent and wary in accuſing miniſters of any cenſurable fault, as that they ought neither to publiſh nor ſpread the ſame, nor accuſe the miniſter before the preſbytery, without firſt acquainting the miniſter himſelf if they can have acceſs thereto, and then, if need be, ſome of the moſt prudent of the miniſters and elders of that preſbytery, and there advice got in the affair.

If there ſhall be ground found to enter in a proceſs againſt a miniſter, the presbytery ſhould firſt conſider the libel, then order him to be cited, and to get a full copy, with a liſt of the witneſſes names to be led for proving theroof, and a formal citation in writ is to be made either perſonally, or at his dwelling houſe, bearing a competent time allowed to give in anſwer to the libel, and his juſt defence and objections againſt witneſſes, at leaſt ten free days before the day of compearance, and the citation ſhould bear the date when given, and the names of the witneſſes to the giving thereof; and the execution bearing its date, with the names and deſignations of the witneſſes ſhould be made in writ, and ſigned by the officer and witneſſes; which being accordingly returned, he is to be called, and if he compear, the libel is to be read unto him, and he is to be enquired if he has anſwers to give in to the libel, that they may be read and conſidered, in order to the diſcuſſing of the relevancy, and if the preſbytery find the ſame, and that there is cauſe to inſiſt, they are to endeavour to bring him to a confeſſion, whereby he may moſt glorify God; and if he confeſs, and the matter confeſſed be of a ſcandalous nature, cenſurable in others, ſuch as the ſin of uncleanneſs, or ſome other groſs ſcandal, the presbytery (whatever be the nature of his penitency, though to the conviction of all) are *inſtanter* to depoſe him *ab officio*, and to appoint him in due time to appear before the congregation where the ſcandal was given, and in his own pariſh, for removing

removing the offence, by the public profeſſion of his repentance.

If a miniſter be accuſed of any ſcandal, and cited to appear before his own preſbytery, and do abſent himſelf by leaving the place, and be contumacious, without making any relevant excuſe, after a new public citation and intimation made at his own church, when the congregation is met, he is to be holden as confeſſed, and to be depoſed and cenſured *inſtanter* with the leſſer excommunication; but if after ſome time he do not return and ſubject himſelf to the cenſure of the church, he may be proceeded againſt till he be cenſured with the greater excommunication, if the judicature ſee cauſe for it.

If the miniſter accuſed do appear and deny the fact after the relevancy is found, the presbytery proceeding to probation, and to find the truth of the matter, all the circumſtances are to be exactly canvaſſed, and the accuſed heard to object againſt the witneſſes. As alſo, he ſhould be allowed to be preſent at the examination, and modeſtly to croſs interrogate, and then the reputation of the witneſſes and their hability duly regarded, and the examination conſidered. If after conſideration of all theſe, the judicature ſhall find the ſcandal ſufficiently proven, they are to proceed to cenſure, as adviſed in the caſe of confeſſion. See preceding page.

If the matter laid to the miniſter's charge be ſuch practices as in their own nature manifeſtly ſubvert that order, unity, and peace, which Chriſt hath eſtabliſhed in his church, or unſoundneſs and heterodoxy in doctrine, then great caution ſhould be uſed, and the knowledge and underſtanding of witneſſes much looked into; and withal, if the errors be not groſs and ſtriking at the vitals of religion, or if they be not pertinaciouſly ſtuck unto, or induſtriouſly ſpread, with a viſible deſign to corrupt, or that the errors are not ſpreading among the people, then lenitives, admonitions, inſtructions, and frequent conferences are to be tried to reclaim without cutting off, and the advice of other presbyteries ſought; and unleſs the thing be doing much hurt, ſo as it admits of no delay, the ſynod or General Aſſembly may be adviſed with in the affair, and the ſame intimate to the miniſter concerned.

If the libel and complaint brought againſt a miniſter be a multitude of ſmaller things laid together, as ſeveral acts of negligence, or other inſuitable actions, the presbytery in proceeding therein are to make a presbyterial viſitation of that pariſh to which the miniſter belongs; and at the ſaid viſitation, are firſt to ſee if any of theſe things now laid to the miniſter's charge were committed prior to the laſt presbyterial viſitation of that pariſh, and whether they were then laid

to his charge, and if they were not, it ſhould be tried how they come to be laid to his charge now.

If the presbytery find theſe things laid to his charge to be committed ſince the laſt viſitation, or find a ſatisfying reaſon wherefore they were not then tabled, they are to inquire what diligence hath been uſed in acquainting the miniſter with the offence taken at theſe things when firſt committed by him, and how far the miniſter hath been guilty of giving offence, after he knew offence to be taken.

It ſhould likewiſe in this caſe be enquired, whether any of the complainers did firſt in a prudent private way inform any of the neighbour miniſters, of ſome of theſe things committed by their miniſter, who is now challenged, before theſe offences came to be ſo many, as to merit a public and ſolemn trial, and accordingly the presbytery is to judge.

If the presbytery find upon trial, the complaint to reſolve upon the miniſter's having committed ſuch acts of infirmity or paſſion, as conſidering all the circumſtances may be either amended and the people ſatisfied, and no ſuch offence taken, or at leaſt not to remain, ſo as to hinder the miniſter's profiting the people, and that the offence was taken by the miniſter's own people only or mainly; then the presbytery is to take all prudent ways to ſatisfy and reclaim both miniſter and people, and do away the offence.

But before a miniſter depoſed for ſcandalous carriage can be reſtored to the exerciſe of the miniſtry, there ſhould not only be convincing evidences of a deep ſorrow for ſin, but an eminent and examplary humble walk, and edifying converſation, ſo apparent and convincing as hath worn out and healed the wound the ſcandal gave.

Immediately on the miniſter's being depoſed by the preſbytery, the ſentence is to be intimate in his congregation, the church declared vacant, the planting thereof with another miniſter haſtened, and never delayed on the expectation of his being reponed, it being almoſt impoſſible, that ever he can prove uſeful in that pariſh again.

CHAP. VIII.

Concerning Proceſſes in order to the Cenſure of the greater Excommunication.

SInce there is a diſtinction betwixt the greater and the leſſer excommunication, it ſeems that whatever have been the cauſes of the firſt proceſs, yet ordinarily all proceſſes that are in order to the greater excommunication are to be grounded on manifeſt contumacy, or obſtinate continuance in ſcandalous practices; and where there is no manifeſt

manifeſt contumacy, or continuance as aforeſaid, the leſſer excommunication needs only have place. Yet in ſome extraordinary caſes, the church, according to ſcripture warrant, hath ſummarily excommunicated perſons guilty of notour atrocious ſcandalous ſins, to ſhew the church's abhorrence of ſuch wickedneſs.

Even where there hath been a ſcandal delated, and contumacy following by not appearing, it would be conſidered, whether any ſcandalous practice hath been proven or not; if not proven, then only the ſimple contumacy is to be proceeded againſt, for which it were hard to go a greater length than the leſſer excommunication.

If the ſcandal hath been proven, and the cenſure of the leſſer excommunication intimated, as in chapter third, it ſeems moſt reaſonable that there be no farther proceeding, unleſs the ſcandal be groſs, or of an heinous nature, or that it is ſpreading and infectious, as in hereſies or ſchiſm in the church. In which caſes contumacy is to be preceded againſt in order to the greater excommunication.

The kirk ſeſſion having brought the proceſs to an intimation of the cenſure of the leſſer excommunication, before they inflict the ſame, they are to refer the affair to the presbytery, bringing their whole proceedings before the presbytery in write, that the presbytery may thereby have a clear and full view of the whole affair.

The presbytery finding the kirk ſeſſion hath orderly proceeded, and that the leſſer excommunication is not ſufficient, and that the affair is ſo weighty as to oblige them to enter on the proceſs, they are to cauſe their officer to cite the ſcandalous perſon.

If the party appear, then the presbytery is to proceed in the inquiry at the accuſed, about the ſcandal alledged and libelled, and if he deny it, then they are to proceed and lead probation as in other caſes.

But if the party appear not, but contemn the citation, the preſbytery cauſeth renew the ſame, until he hath got three citations, and after the three citations, he is to be cited out of the pulpit: and for the further conviction of all concerned, intimation is to be made, that the judicature will proceed and inquire into the preſumptions or probation of the guilt, and this is to be done although the delinquent be abſent.

Then the preſbytery is to order the miniſter of the congregation next Sabbath after forenoon's ſermon, to acquaint the congregation what proceedings the kirk ſeſſion firſt, and thereafter the preſbytery hath made in the affair, and how contumacious the party was, and that the preſbytery intended to proceed to the higheſt cenſure; and the miniſter is gravely to admoniſh the party (if preſent) to repent and ſubmit himſelf to the diſcipline of the church, threatning him, if he con-

tinue impenitent, that the church will proceed, yea, though he be absent, the minister is to acquaint the people, that the church requires him to repent and submit as above said, under the foresaid certification.

There should be three public admonitions, and a presbytery should intervene betwixt each admonition; and if after all, that person continue impenitent or contumacious, the same is to be represented to the presbytery, who are thereupon to appoint public prayers thrice to be made, in which the minister is to exhort the congregation seriously to join with him in prayer, for the scandalous, impenitent or contumacious person, which he is solemnly to put up to God, humbly begging that he would deal with the soul of the impenitent, and convince him of the evil of his ways.

These public prayers of the church are to be put up three several Sabbath days, a presbytery (where its meeting are more frequent, once a month at least) intervening betwixt each public prayer, both to shew the church's tenderness towards their lapsed brother, their earnestness to have him reclaimed, and likewise to create a greater regard and terror of that dreadful censure, both in the party and in all the people.

If after all, the scandalous person makes no application, but continue impenitent, the presbytery, after prayer, is to pass sentence, and appoint a minister to intimate the same, and to shew the presbytery's resolution to proceed upon such a Sabbath as they shall name, for pronouncing that dreadful sentence solemnly in face of the congregation, unless either the party, or some for him, signify some relevant ground to stop their procedure.

That day being come, it were fit the minister did preach a sermon suited to that solemn occasion, or at least after sermon the minister should show the congregation what he is going about, introducing the narrative of the process, with a discourse concerning the nature, use, and end of church censures, particularly that of the greater excommunication, if he hath not done it fully in his sermon.

The narrating all the steps of the process in order, shewing the church's faithfulness and tenderness towards the scandalous person, and declaring his obstinate impenitency; and that now, after all other means were used, there remained only that of cutting off the scandalous person from the society of the faithful, and intimating the church's warrant and order to him so to do.

And before the minister pronounce the sentence, he is to pray, and desire all the congregation to join with him therein, that God would grant repentance to the obstinate person, would graciously bless his own

own ordinance, and make the cenſure effectual, both to edify others, and to be a mean to reclaim the obſtinate ſinner.

Then after prayer, the miniſter is with great gravity and authority to pronounce the cenſure, ſhewing his warrant from our Lord's command, and the apoſtle Paul's direction, and recapitulating the presbytery's warrant in obedience thereunto, and reſuming the ſcandalous and obſtinate perſon's behaviour, whom he is to name; he therefore, in the name and authority of our Lord and Maſter Jeſus Chriſt, doth, *in verbis de præſenti*, pronounce and declare him or her excommunicated, and ſhut out from the communion of the faithful, debarring that perſon from their privileges; and in the words of the apoſtle, delivering that perſon over to Satan; which ſentence is to be intimate according to the 9th act of the Aſſembly, *anno* 1704.

If after prayer, or before the cenſure be pronounced, the ſcandalous perſon do make any public ſignification of his repentance, and of his deſire to have the cenſure ſtopt, the miniſter, upon apparent ſeriouſneſs in the ſcandalous perſon, which he ſheweth to the congregation, may thereupon delay pronouncing the ſentence, till he report to the presbytery at their next meeting, who are then to deal with the ſcandalous perſon as they ſhall find cauſe.

After the pronunciation of this ſentence, the people are to be warned, that they hold that perſon to be caſt out of the communion of the church, and that they ſhun all unneceſſary converſe with him or her; nevertheleſs excommunication diſſolved not the bounds of civil or natural relations, not exempts from the duties belonging to them.

Although it be the duty of paſtors and ruling elders to uſe all diligence and vigilance, both by doctrine and diſcipline reſpectively, for preventing and purging out ſuch errors, hereſies, ſchiſms, and ſcandals, as tend to the detriment and diſturbance of the church; yet becauſe it may fall out through the pride and ſtubbornneſs of offenders, that theſe means alone will not be effectual to that purpoſe, it is therefore neceſſary after all this, to employ the aid of the civil magiſtrate, who ought to uſe his coercive power for the ſuppreſſing of all ſuch offences, and vindicating the diſcipline of the church from contempt.

CHAP. IX.

Concerning the Order of proceeding to Abſolution.

IF after excommunication the ſigns of repentance appear in the excommunicated perſon, ſuch as godly ſorrow, for having incurred God's heavy diſpleaſure by his ſin, occaſioned grief to his brethren, and

and justly provoked the church to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God through Christ, and to reform his life and conversation, with an humble desire of recovering peace with God and his people, and to be restored to the favour of God and light of his countenance, through the blood of Jesus Christ, and to the communion of the church, and the presbytery, upon his application be satisfied therewith, and judge that he ought to be absolved, and thereupon give warrant for his absolution, he is to be brought before the congregation, and there also to make free confession of his sin, and sorrow for it, to call upon God for mercy in Christ, to seek to be restored to the communion of the church, promising to God, through grace, new obedience, and more holy and circumspect walking as becomes the gospel; and that this appearance before the congregation be as often as church judicatures shall find may be for edification and trial of the professing penitent's sincerity; and being satisfied in this, then the minister and congregation are to praise God, who delighteth not in the death of a sinner, but rather that he should repent and live; as also for blessing the ordinance of excommunication, and making it effectual by his Spirit to the recovering of this offender, to magnify the mercy of God through Jesus Christ, in pardoning and receiving to his favour the most grievous offenders, whensoever they unfeignedly repent and forsake their sins: But before the minister proceed to absolution, he is to pray with the congregation to this effect: "That the Lord Jesus Christ, prophet, "priest, and king of his church, who, with the preaching of the gos- "pel, hath joined the power to bind and loose the sins of men: who "hath also declared, that whatsoever by his ministers is bound on "earth shall be bound in heaven, and also that whatsoever is loos- "ed by the same, shall be loosed and absolved in heaven, would "mercifully accept his creature N. whom Satan of long time hath "holden in bondage, so that he not only drew him to iniquity, but "also so hardened his heart, that he despised all admonitions; for the "which his sin and contempt, the church was compelled to excom- "municate him from the society of the faithful; but now seeing the "Holy Spirit by his grace hath so prevailed, that he is returned and "professeth repentance toward God, and faith toward our Lord Jesus "Christ, that it may please God by his spirit and grace to make him "a sincere and unfeigned penitent, and for the obedience of our Lord "Jesus Christ unto death, so to accept of this poor believing and "returning sinner, that his former disobedience be never laid to his "charge, and that he may increase in all godliness, so that Satan in "the end may be trodden under foot by the power of our Lord Jesus "Christ,

" Chriſt, and God may be glorified, the church edified, and the pe-
" nitent ſaved in the day of the Lord."

Then ſhall follow the ſentence of abſolution in theſe or the like words: " Whereas thou N. haſt for thy ſin been ſhut out from the " communion of the faithful, and haſt now manifeſted thy repent-" ance, wherein the church reſteth ſatisfied, I. in the name of the " Lord Jeſus, before this congregation, pronounce and declare thee " abſolved from the ſentence of excommunication formerly denoun-" ced againſt thee, and do receive thee to the communion of the " church, and the free uſe of all the ordinances of Chriſt, that thou " mayeſt be partaker of all his benefits to thy eternal ſalvation "

After this ſentence of abſolution, the miniſter ſpeaketh to him as to a brother, exhorting him to watch and pray, and comforting him as there ſhall be cauſe; the elders embrace, and the whole congregation holdeth communion with him, as one of their own: and the abſolution ſhould be intimate in all the churches where the excommunication was intimate.

THE

THE SECOND BOOK of DISCIPLINE:

OR,

HEADS and CONCLUSIONS of the POLICY of the KIRK.

Agreed upon in the General Assembly 1578, inserted in the registers of Assembly 1581, sworn to in the National Covenant, revived and ratified by the Assembly 1638, and by many other acts of Assembly: And according to which the Church-government is established by Law, *anno* 1592 and 1690.

CHAP. I. *Of the Kirk and Policie thereof in general, and wherein it is different from the Civill Policie.*

THE kirk of God sometimes is largely taken for all them that professe the evangell of Jesus Christ, and so it is a company and fellowship not onely of the godly, but also of hypocrites professing alwayes outwardly the true religion.

Other times it is taken for the godly and elect onely, and sometimes for them that exercise spiritual function in the congregation of them that professe the truth.

The kirke in this last sence hath a certaine power granted by God, according to the which it uses a proper jurisdiction and government, exercised, to the comfort of the whole kirke.

This power ecclesiasticall is an authoritie granted by God the Father, through the mediator Jesus Christ, unto his kirke gathered, and having the ground in the word of God to be put in execution by them, unto whom the spiritual government of the kirk by lawfull calling is committed.

The policie of the kirk flowing from this power, is an order or forme of spirituall government, which is exercised by the members appoynted thereto by the word of God: and therefore is given immediately to the office-bearers, by whom it is exercised to the weale of the whole body.

This power is diversly used: for sometime it is severally exercised, chiefly by the teachers, sometime conjunctly by mutuall consent of

of them that beare the office and charge, after the forme of judgement. The former is onely called *potestas ordinis*, and the other *potestas jurisdictionis*.

These two kinds of power have both one authority, one ground, one finall cause, but are different in the manner, and forme of execution, as is evident by the speaking of our master in the XVI and

This power and pollicie ecclesiasticall, is different and distinct in the own nature from that power and policie which is called civill power, and appertaineth to the civill government of the commonwealth: albiet they be both of God, and tend to one end, if they be rightly used, viz. to advance the glory of God, and to have godly and good subjects

For this power ecclesiasticall floweth immediately from God, and the Mediator Jesus Christ, and is spirituall, not having a temporal head in the earth, but onely Christ, the onely spirituall king and governour of his kirk.

It is a title falsly usurped by Antichrist, to call himselfe head of the kirk, and ought not to be attributed to Angel, nor man, of what estate that ever he be, saving to Christ the onely head and monarch in the kirk.

Therefore this power and policie of the kirk should leane upon the word immediately, as the only ground thereof, and should be taken from the pure fountains of the scriptures, the kirk hearing the voyce of Christ the onely spirituall king, and being ruled by his lawes.

It is proper kings, princes and magistrates, to be called Lords, and dominators over their subjects whom they govern civilly, but it is proper to Christ onely to be called Lord and master in the spirituall government of the kirk, and all others that beare office therein, ought not to usurp dominion therein, nor be called Lords, but onely ministers, disciples, and servants. For it is Christ's proper office to command and rule his kirk universally, and every particular kirk through his spirit and word, by the ministry of men.

Notwithstanding, as the ministers and others of the ecclesiasticall estate are subject to the magistrate civill, so ought the person of the magistrate be subject to the kirk spiritually, and in ecclesiasticall government. And the exercise of both these jurisdictions cannot stand in one person ordinarie.

The civill power is called the power of the sword, and the other the power of the keyes.

The civill power should command the spiritual to exercise, and to exercise, and to doe their office according to the word of God; the spirituall rulers should require the Christian magistrate to minister justice, and punish vice, and to maintaine the libertie and quietnes of the kirk within their bounds.

The magiſtrate commandeth externall things for externall peace and quietneſſe amongſt the ſubjects: the miniſter handleth externall things onely for conſcience cauſe.

The magiſtrate handleth externall things onely, and actions done before men, but the ſpirituall ruler judgeth both inward affections, and externall actions in reſpect of conſcience by the word of God.

The civill magiſtrate craves and gets obedience by the ſword, and other externall meanes, but the miniſtrie, by the ſpirituall ſword, and ſpirituall meanes.

The magiſtrate neither ought to preach, miniſter the ſacraments, nor execute the cenſures of the kirk, nor yet preſcribe any rule how it ſhould be done, but command the miniſters to obſerve the rule commanded in the word, and puniſh the tranſgreſſors by civill meanes. The miniſters exerce not the civill juriſdiction, but teach the magiſtrate, how it ſhould be exerciſed according to the word.

The magiſtrate ought to aſſiſt, maintaine and fortifie the juriſdiction of the kirk. The miniſters ſhould aſſiſt their princes in all things agreeable to the word, providing they neglect not their own charge by involving themſelves in civill affaires.

Finally, as miniſters are ſubject to the judgement and puniſhment of the magiſtrate in externall things, if they offend: ſo ought the magiſtrates to ſubmit themſelves to the diſcipline of the kirk, if they tranſgreſſe in matters of conſcience and religion.

CHAP. II. *Of the Policie of the Kirk, and Perſons and Office-bearers to whom the Adminiſtration is committed.*

AS in the civill policie the whole commonwealth conſiſteth in them that are governors, or magiſtrates, and them that are governed, or ſubjects. So in the policie of the kirk ſome are appointed to be rulers, and the reſt of the members thereof to be ruled, and obey according to the word of God, and inſpiration of his ſpirit, alwayes under one head and chiefe governour, Jeſus Chriſt.

Againe, the whole policie of the kirk conſiſteth in three things, in doctrine, diſcipline, and diſtribution. With doctrine is annexed the adminiſtration of ſacraments: and according to the parts of this diviſion, ariſeth a ſort of threefold officers in the kirk, to wit, of miniſters preachers, elders governours, and deacons deſtributers. And all theſe may be called by a generall word, miniſters of the kirk. For albiet the kirk of God be ruled and governed by Jeſus Chriſt, who is the onely king, high prieſt, and head thereof, yet he uſeth the miniſtery of men, as the moſt neceſſary middes for this purpoſe.

For ſo hee hath from time to time, before the law, under the law, and

and in the time of the Evangell, for our great comfort, raiſed up men indued with the gifts of the ſpirit, for the ſpirituall government of his kirk, exerciſing by themh is own power, through his ſpirit and word, to the building of the ſame.

And to take away all occaſion of tyranny, hee will that they ſhould rule with mutuall conſent of brether, and æqualitie of power, every one according to their functions.

In the New Teſtament, and time of the Evangell, hee hath uſed the miniſtery of the apoſtles, prophets, evangeliſts, paſtors, and doctors in adminiſtration of the diſcipline; the deaconſhip to have the cure of the eccleſiaſticall goods.

Some of their eccleſiaſticall functions are ordinarie, and ſome extraordinary or temporarie. There be three extraordinary functions; the office of the apoſtle, the evangeliſt, and of the prophet, which are not perpetuall, and now have ceaſed in the kirk of God, except when it pleaſed God extraordinarily for a time to ſtirre ſome of them up againe.

There are foure ordinarie functions or offices in the kirke of God, the office of the paſtor, miniſter or biſhop, the doctor, preſbyter or elder, and the deacon.

Thir offices are ordinarie, and ought to continue perpetually in the kirk, as neceſſarie for the government and policie thereof, and no moe offices ought to be received or ſuffered in the kirk of God, eſtabliſhed according to his word.

Therefore all the ambitious titles invented in the kingdome of Antichriſt, and in his uſurped hierarchie, which are not of one of theſe foure ſorts, together with the offices depending thereupon, in one word ought to be rejected.

CHAP. III. *How the Perſons that beare eccleſiaſtical Functions are to bee admitted to their Office.*

VOcation or calling is common to all that ſhould beare office within the kirk, which is a lawfull way, by the which qualified perſons are promoted to any ſpirituall office within the kirk of God.

Without this lawful calling it was never leaſome to any perſon to meddle with any function eccleſiaſticall.

There are two ſorts of calling, one extraordinarie by God immediately, as was of the prophets and apoſtles, which in kirks eſtabliſhed and well alreadie reformed hath no place.

The other calling is ordinarie, which, beſides the calling of God, and inward teſtimony of a good conſcience, is the lawfull approbation,

and outward judgement of men, according to God's word, and order eſtabliſhed in his kirk.

None ought to preſume to enter in any office eccleſiaſticall without this good teſtimony before God, who onely knows the hearts of men.

This ordinary and outward calling hath two parts, election and ordination. Election is the choſing out of a perſon, or perſons, moſt able, to the office that vakes, by the judgement of the elderſhip, and conſent of the congregation, to which ſhall be the perſon, or perſons appointed.

The qualities in generall requiſite in all them, who ſhould beare charge in the kirk, conſiſt in ſoundneſſe of religion, and godlineſſe of life, according as they are ſufficiently ſet forth in the word.

In the order of election it is to be eſchewed, that any perſon be intruſed in any offices of the kirk, contrary to the will of the congregation to which they are appointed, or without the voice of the elderſhip.

None ought to be intruſed, or placed in the places already planted, or in any roome that vakes not, for any wordly reſpect: and that which is called the benefice ought to be nothing elſe, but the ſtipend of the miniſters that are lawfully called.

Ordination is the ſeparation and ſanctifying of the perſon appointed to God and his kirk, after he be well tryed and found qualified.

The ceremonies of ordination are faſting, earneſt prayer, and impoſition of hands of the elderſhip.

All thir, as they muſt be raiſed up by God, and by him made able for the work whereto they are called, ſo ought they know their meſſage to be limited within God's word, without the bounds of the which they ought not to paſſe

All thir ſhould take theſe titles and names onely (leſt they be exalted and puft up in themſelves) which the ſcriptures gives unto them, as theſe which import labour, travell and work, and are names of offices and ſervice, and not of idleneſſe, dignity, worldly honour or preheminence, which by Chriſt our maſter is expreſly reproved and forbidden.

All theſe office bearers ſhould have their own particular flocks, amongſt whom they exerciſe their charge.

All ſhould make reſidence with them, and take the inſpection and overſight of them, every one in his vocation.

And generally thir twa things ought they all to reſpect: the glorie of God, and edifying of his kirk, in diſcharging their duties in their calling.

CHAP.

CHAP. IV. *Of the Office-bearers in particular, and first of the Pastors or Ministers.*

PAstors, bishops, or ministers, are they who are appointed to particular congregations, which they rule by the word of God, and over the which they watch. In respect whereof, sometime they are called pastors, because they feed their congregation; sometime *episcopi*, or bishops, because they watch above their flock; sometimes ministers, by reason of their service and office, and sometimes also presbyters or seniors, for the gravity in manners which they ought to have in taking care of the spirituall government, which ought to be most deare unto them.

They that are called unto the ministerie, or that offer themselves thereunto, ought not to be elected without any certain flock be assigned unto them.

No man ought to ingyre himselfe, or usurpe this office without lawfull calling.

They who are once called by God, and duely elected by man, after that they have once accepted the charge of the ministerie, may not leave their functions.

The desertours should be admonished, and in case of obstinacie finally excommunicate.

No pastor may leave his flock without licence of the provinciall, or nationall Assembly, which if he doe, after admonitions not obeyed, let the censures of the kirk strick upon him.

Vnto the pastors apperteines teaching of the word of God, in season and out of season, publickly and privately, always travelling to edifie, and discharge his conscience, as God's word prescribes to him

Vnto the pastors onely apperteines the administration of the sacraments, in like manner as the administration of the word: for both are appointed by God, as meanes to teach us, the one by the eare, and the other by the eyes, and other senses, that by both, knowledge may be transferred to the minde.

It appertaines by the same reason to the pastor to pray for the people, and namely, for the flock committed to his charge, and to blesse them in the name of the Lord, who will not suffer the blessings of his faithfull servants to be frustrate.

He ought also to watch above the manners of his flock, that the better he may apply the doctrine to them in reprehending the dissolute persons, and exhorting the godly to continue in the feare of the Lord.

It apperteines to the minister, after lawfull proceeding by the elder-

ship,

ſhip, to pronounce the ſentence of binding and looſing upon any perſon, according unto the power of the keyes granted unto the kirk.

It belongs to him likewiſe, after lawfull proceeding in the matter by the elderſhip, to ſolemnizate marriage betwixt them that are to be joyned therein, and to pronounce the bleſſing of the Lord upon them, that enter in at that holy band in the feare of God.

And generally all publick denunciations that are to be made in the kirk before the congregation concerning the eccleſiaſticall affaires belonging to the office of a miniſter: for he is as meſſenger and herauld betwixt God and the people in all theſe affaires.

CHAP. V. *Of Doctors, and their Office, and of the Schooles.*

ONE of the two ordinary and perpetuall functions that travell in the word, is the office of the doctor, who may bee alſo called prophet, biſhop, elder, catechiſer, that is, teacher of the catechiſme, and rudiments of religion.

His office is to open up the minde of the ſpirit of God in the ſcriptures ſimply, without ſuch applications as the miniſters uſe, to the end that the faithfull may be inſtructed, and ſound doctrine taught, & that the purity of the goſpell be not corrupted through ignorance, or evill opinions.

Hee is different from the paſtor, not onely in name, but in diverſity of gifts. For to the doctor is given the word of knowledge, to open up by ſimple teaching the myſteries of faith, to the paſtor the gift of wiſedome, to apply the ſame by exhortation to the manners of the flock, as occaſion craveth.

Under the name and office of a doctor wee comprehend alſo the order in ſchooles, colledges, and univerſities, which hath been from time to time carefully maintained, as well among the Jewes and Chriſtians, as alſo among the prophane nations.

The doctor being an elder, as ſaid is, ſhould aſſiſt the paſtor in the government of the kirk, and concurre with the elders his brethren in all aſſemblies; by reaſon the interpretation of the word, which is onely judge in eccleſiaſticall matters, is committed to his charge.

But to preach unto the people, to miniſter the ſacraments, and to celebrate mariages, perteine not to the doctor, unleſſe he be otherwiſe called ordinarily: howbeit the paſtor may teach in the ſchooles, as he who hath the gift of knowledge, oftentimes meet for that end, as the examples of *Polycarpus*, and others teſtifie; &c.

CHAP.

CHAP. VI. *Of Elders, and their Office.*

THE word elder in the ſcripture, ſometime is the name of age, ſometime of office. When it is the name of any office, ſome time it is taken largely, comprehending as well the paſtors and doctors, as them who are called ſeniors or elders.

In this our diviſion, we call theſe elders, whom the Apoſtles call preſidents or governours. Their office as it is ordinary, ſo is it perpetuall and alwaies neceſſarie in the kirk of God. The elderſhip is a ſpirituall function, as is the miniſterie.

Elders once lawfully called to the office, and having gifts from God meet to exerciſe the ſame, may not leave it again, Albeit ſuch an number of elders may be choſen in certaine congregations, that one part of them may relieve another for a reaſonable ſpace, as was among the Levites under the law in ſerving of the temple.

The number of the elders in every congregation cannot well be limited, but ſhould be according to the bounds and neceſſitie of the people.

It is not neceſſarie that all elders be alſo teachers of the word, albeit the chiefe ought to be ſuch, and ſwa are worthie of double honour.

What manner of perſons they ought to be, we referre it to the expreſſe word, and namely the canons written by the Apoſtle Paul.

Their office is as well ſeverally, as conjunctly, to watch diligently upon the flock committed to their charge, both publickly, and privately, that no corruption of religion, or manners, enter therein.

As the paſtors and doctors ſhould be diligent in teaching and ſowing the ſeed of the word, ſo the elders ſhould be careful in ſeeking the fruit of the ſame in the people.

It appertaines to them to aſſiſt the paſtor in examination of them that come to the Lord's Table: item, in viſiting the ſick.

They ſhould cauſe the acts of the Aſſemblies, as well particular as generall, to be put in execution carefully.

They ſhould be diligent in admoniſhing all men of their dutie according to the rule of the Evangell.

Things that they cannot correct by private admonitions they ſhould bring to the elderſhip.

Their principall office is to hold aſſemblies with the paſtors and doctors who are alſo of their number, for eſtabliſhing of good order and execution of diſcipline, unto the which aſſemblies all perſones are ſubject that remaine within their bounds.

CHAP.

CHAP. VII. *Of the Elderſhips, Aſſemblies, and Diſcipline.*

ELderſhips and aſſemblies are commonly conſtitute of paſtors, doctors, and ſuch as we commonly call elders, that labour not in the word and doctrine, of whom, and of whoſe ſeverall power, hath bene ſpoken.

Aſſemblies are of foure ſorts. For either are they of particular kirks and congregations ane or moe, or of a province, or of a whole nation, or of all and divers nations profeſſing one Jeſus Chriſt.

All the eccleſiaſticall aſſemblies have power to convene lawfully together for treating of things concerning the kirk, and perteining to their charge.

They have power to appoint times, and places to that effect, and at one meeting to appoint the dyet, time and place for another.

In all aſſemblies an moderator ſhould be choſen by common conſent of the whole brethren convened, who ſhould propone matters, gather the votes, and cauſe good order to be kept in the aſſemblies.

Diligence ſhould be taken, chiefly by the moderator, that onely eccleſiaſticall things be handled in the aſſemblies, and that there be no medling with any thing perteining to the civill juriſdiction.

Every aſſembly hath power to ſend forth from them of their own number, ane or moe viſitors to ſee how all things be ruled in the bounds of their juriſdiction.

Viſitation of moe kirks is no ordinary office eccleſiaſtick in the perſon of one man, neither may the name of a biſhop be attribute to the viſitor onely, neither it is neceſſary to abide alwaies in one man's perſon, but it is the part of the elderſhip to ſend out qualified perſons to viſit *pro re nata*.

The finall end of Aſſemblies is firſt to keep the religion and doctrine in puritie, without error and corruption. Next, to keep ecomelineſſe and good order in the kirk.

For this orders cauſe, they may make certaine rules and conſtitutions appertaining to the goood behaviours of all the members of the kirk in their vocation.

They have power alſo to abrogate and aboliſh all ſtatures and ordinances concerning eccleſiaſtical matters, that are found noyſome and unprofitable, and agree not with the time, or are abuſed by the people.

They have power to execute eccleſiaſtical diſcipline and punihment upon all tranſgreſſors, and proud contemners of the good order and policie of the kirke, and ſo the whole diſcipline is in their hands.

The firſt kinde and ſort of aſſemblies, although they be within particular congregations, yet they exerce the power, authoritie and juriſdiction

riſdiction of the kirk with mutuall conſent, and therefore beare ſometime the name of the kirk.

When we ſpeake of the elders of the particular congregations, we mean not that every particular pariſh kirk can, or may have their own particular elderſhips, ſpecially in landward, but wee think three, four, moe or fewer particular kirks, may have one elderſhip common to them all, to judge their eccleſiaſticall cauſes.

Yet this is meet, that ſome of the elders be choſen out of every particular congregation, to concurre with the reſt of their brethren in the common aſſembly, and to take up the delations of offences within their owne kirks, and bring them to the aſſembly.

This we gather of the practiſe of the primitive kirk, where elders or colledges of ſeniors were conſtitute in cities and famous places.

The power of their particular elderſhips is to uſe diligent labours in the bounds committed to their charge, that the kirks be kept in good order, to inquire diligently in naughtie and unruly perſons, and travell to bring them in the way againe, either by admonition or threatning of God's judgements; or by correction.

It pertaines to the elderſhip to take heed, that the word of God be purely preached within their bounds, the ſacraments rightly miniſtred, the diſcipline rightly maintained, and the eccleſiaſticall goods uncorruptly diſtributed. It belongs to this kinde of aſſembly, to cauſe the ordinances made by the aſſemblies provinciall, nationall, and generall, to be kept, and put in execution.

To make conſtitutions which concerne τοπρεπον in the kirk, for the decent order of theſe particular kirks, where they governe: providing they alter no rules made by the generall, or provinciall aſſemblies, and that they make the provinciall aſſemblies foreſeen of theſe rules that they ſhall make, and aboliſh them that tend to the hurt of the ſame.

It hath power to excommunicate the obſtinate.

The power of election of them who beare eccleſiaſticall charges pertaines to this kind of Aſſembly within their owne bounds, being well erected, and conſtitute of many paſtors, and elders of ſufficient abilitie.

By the like reaſon their depoſition alſo pertaines to this kinde of aſſembly, as of them that teach erronious and corrupt doctrine, that be of ſlanderous life, and after admonition deſiſt not, that be given to ſchiſme, or rebellion againſt the kirke, manifeſt blaſphemy, ſimonie, corruption of bribes, falſhood, perjurie, whoordome, theft, drunkenneſſe, fighting worthy of puniſhment by the law, uſurie, dauncing, infamie, and all others, that deſerve ſeparation from the kirk.

Theſe alſo who are altogether found unſufficient to execute their charge ſhould be depoſed, whereof other kirks would be advertiſed, that they receive not the perſons depoſed.

Yet they ought not to be depoſed, who, through age, ſickneſſe, or other accidents, become unmeet to do their office, in which caſe their honour ſhould remain to them, their kirk ſhould maintaine them; and others ought to be provided to doe their office.

Provinciall aſſemblies wee call lawfull conventions of the paſtors, doctors, and other elders of a province, gathered for the common affaires of the kirkes thereof, which alſo may bee called the conference of the kirk and brethren.

Thir aſſemblies are inſtitute for weightie matters to be intreated by mutuall conſent and aſſiſtance of the brethren within that province, as need requires.

This aſſembly hath power to handle, order, and redreſſe all things committed or done amiſſe in the particular aſſemblies.

It hath power to depoſe the office-bearers of that province for good and juſt cauſes deſerving deprivation.

And generally thir aſſemblies have the whole power of the particular elderſhips whereof they are collected.

The nationall aſſembly, which is generall to us, is a lawfull convention of the whole kirks of the realm or nation where it is uſed and gathered for the common affaires of the kirk, and may be called the generall elderſhip of the whole kirks in the realme. None are ſubject to repaire to this aſſembly to vote but eccleſiaſticall perſons, to ſuch a number as ſhall be thought good by the ſame aſſemblie, not excluding other perſons that will repaire to the ſaid aſſembly to propone, heare, and reaſon.

This aſſemblie is inſtitute, that all things either committed, or done amiſſe in the provinciall aſſemblies may be redreſſed and handled, and things generally ſerving for the weale of the whole bodie of the kirk within the realme may be foreſeen, and ſet forth to God's glorie.

It ſhould take care, that kirks be planted in places where they are not planted

It ſhould preſcribe the rule how the other two kinds of aſſemblies ſhould proceed in all things.

This aſſembly ſhould take heed, that the ſpirituall juriſdiction, and civill, be not confounded to the hurt of the kirk: that the patrimonie of the kirk be not conſumed, nor abuſed; and generally concerning all weighty affaires that concerne the weale and good order of the whole kirks of the realm, it ought to interpone authoritie thereto.

There is beſides theſe, an other more generall kinde of aſſemblie, which is of all nations, and all the eſtates of perſons within the kirk, repreſenting the univerſall kirk of Chriſt, which may be called properly the generall aſſembly, or generall councell of the kirk of God.

Theſe aſſemblies were appointed and called together ſpecially, when

when any great ſchiſme or controverſie in doctrine did ariſe in the kirk, and were convocate at command of godly emperours being for the time, for avoiding of ſchiſmes within the univerſall kirk of God, which, becauſe the perteine not to the particular eſtate of any realme, we ceaſe further to ſpeake of them.

CHAP. VIII. *Of the Deacons and their office, the laſt ordinary function in the Kirk.*

THE word Διακονος ſometimes is largely taken, comprehending all them that beare office in the miniſterie, and ſpirituall function in the kirk.

But now, as we ſpeake, it is taken onely for them unto whom the collection and diſtribution of the almes of the faithfull and eccleſiaſticall goods doth belong.

The office of the deacons ſo taken, is an ordinarie and perpetuall eccleſiaſticall function in the kirk of Chriſt.

Of what properties and duties he ought to be that is called to this function, we remit it to the manifeſt ſcriptures.

The deacon ought to be called and elected, as the reſt of the ſpirituall officers, of the which election was ſpoken before.

Their office and power is to receive, and to diſtribute the whole eccleſiaſticall goods unto them to whom they are appointed.

This they ought to doe according to the judgement, and appointment of the preſbyteries, or elderſhips (of the which the deacons are not) that the patrimony of the kirk and poore be not converted to private mens uſes, nor wrongfully diſtribute.

CHAP. IX. *Of the patrimonie of the Kirk, and diſtribution thereof.*

BY the patrimonie of the kirk, we meane whatſoever thing hath been at any time before, or ſhall be in times coming given, or by conſent and univerſall cuſtome of the countries profeſſing the Chriſtian religion applyed to the publique uſe and utilitie of the kirk.

So that under the patrimonie we comprehend all things given, or to be given to the kirk and ſervice of God, as lands, biggings, poſſeſſions, annuelrents, and all ſuch like, wherewith the kirk is doted, either by donations, foundations, mortifications, or any other lawfull titles of kings, princes, or any perſons inferiour to them, together with the continuall oblations of the faithfull.

We comprehend alſo all ſuch things, as by lawes or cuſtome, or uſe of countries, have been applyed to the uſe and utility of the kirk, of the which ſort are teinds, manſes, glebs, and ſuch like, which

by common and municipall lawes and univerſall cuſtome are poſſeſſed by the kirk.

To take any of this patrimonie by unlawfull meanes, and convert it to the particular and profane uſe of any perſon, we hold it a deteſtable ſacriledge before God.

The goods eccleſiaſticall ought to be collected, and diſtributed by the deacons, as the word of God appoints, that they who beare office in the kirk be provided for without care or ſolicitude.

In the apoſtolicall kirk, the deacons were appointed to collect and diſtribute what ſumme ſoever was collected of the faithful, to diſtribute unto the neceſſitie of the ſaints, ſo that none lacked amongſt the faithfull.

Theſe collections were not onely of that which was collected in manner of almes, as ſome ſuppoſe, but of other goods, moveable, and unmoveable, of lands and poſſeſſions, the price whereof was brought to the feet of the apoſtles.

This office continued in the deacons hands, who intrometted with the whole goods of the kirk, ay and while the eſtate thereof was corrupted by Antichriſt, as the antient canons beare witneſſe.

The ſame canons make mention of a fourefold diſtribution of the patrimonie of the kirk, whereof one part was applyed to the paſtor or biſhop for his ſuſtentation and hoſpitality; another to the elders and deacons, and all the clergie; the third to the poore, ſick perſons and ſtrangers; the fourth to the upholding other affaires of the kirk, ſpecially extraordinary.

We add hereunto the ſchooles and ſchoolemaſters alſo, which ought and may be well ſuſteined of the ſame goods, and are comprehended under the clergie. To whom we joyn alſo clerks of aſſemblies, as well particular as generall, ſyndicks or procutors of the kirk affaires, takers up of the pſalmes, and ſuch like other ordinary officers of the kirk, ſo farre as they are neceſſary.

CHAP. X. *Of the Office of a Chriſtian Magiſtrate in the kirk.*

ALthough all the members of the kirk be holden every one in their vocation, and according thereto, to advance the kingdom of Jeſus Chriſt, ſo far as lyeth in their power, yet chiefly Chriſtian princes, and other magiſtrates, are holden to doe the ſame.

For they are called in the ſcripture nourjſhers of the kirk, for ſo much as by them it is, or at leaſt ought to be maintained, foſtered, upholden, and defended againſt all that would procure the hurt thereof.

So it perteines to the office of a Chriſtian magiſtrate, to aſſiſt and fortifie the godly proceedings of the kirk in all behalfes; and namely to

to ſee that the publique eſtate and miniſterie thereof be maintained and ſuſteined, as it appertaines, according to God's word.

To ſee that the kirk be not invaded, nor hurt by falſe teachers and hirelings, nor the roomes thereof be occupied by dumb doggs, or idle bellies.

To aſſiſt and maintaine the diſcipline of the kirk, and puniſh them civilly, that will not obey the cenſure of the ſame, without confounding alwaies the one juriſdiction with the other.

To ſee that ſufficient proviſion be made for the miniſterie, the ſchooles, and the poore: and if they have not ſufficient to awaite upon their charges, to ſupply their indigence even with their own rents, if need require.

To hold hand as well to the ſaving of their perſons from injurie and open violence, as to their rents and poſſeſſions, that they be not defrauded, robbed, nor ſpoiled thereof.

Not to ſuffer the patrimony of the kirk to be applyed to profane and unlawfull uſes, or be devoured by idle bellies, and ſuch as have no lawfull function in the kirk, to the hurt of the miniſtery, ſchooles, poore, and other godly uſes, whereupon the ſame ought to be beſtowed.

To make laws and conſtitutions agreable to God's word, for advancement of the kirk, and policie thereof, without uſurping any thing that perteins not to the civil ſword, but belongs to the offices that are meerly eccleſiaſticall, as is the miniſterie of the word and ſacraments, uſing eccleſiaſticall diſcipline, and the ſpirituall execution thereof, or any part of the power of the ſpirituall keyes, which our maſter gave to the apoſtles, and their true ſucceſſours.

And although kings and princes that be godly, ſome times by their own authority, when the kirk is corrupted and all things out of order, place miniſters and reſtore the true ſervice of the Lord, after the example of ſome godly kings of Iuda, and divers godly emperours, and kings alſo in the light of the New Teſtament; yet where the miniſterie of the kirk is once lawfully conſtitute, and they that are placed doe their office faithfully, all godly princes and magiſtrates ought to heare, and obey their voice, and reverence the majeſtie of the Son of God ſpeaking in them.

CHAP. XI. *Of the preſent abuſes remaining in the Kirk, which we deſire to be reformed.*

AS it is the duty of the godly magiſtrate to maintain the preſent liberty, which God hath granted by the preaching of his word, and the true adminiſtration of the ſacraments within this realm: ſo is

it

it to provide, that all abuſes which yet remaine in the kirk, be removed, and utterly taken away.

Therefore firſt the admiſſion of men to papiſticall titles of benefices, ſuch as ſerve not, nor have no function in the reformed kirk of Chriſt, as abbotes, commendators, priors, prioreſſes, and other titles of Abbeyes, whoſe places are now for the moſt part by the juſt judgement of God demoliſhed, and purged of idolatry, is plaine abuſe, and is not to receive the kingdom of Chriſt amongſt us, but rather to refuſe it.

Such like that they that of old were called the chapiters and convents of Abbeyes, cathedrall kirks, and like places, ſerve for nothing now, but to ſet fewes and tacks, if any thing be left of the kirk lands and teinds, in hurt and prejudice thereof, as daily experience teacheth, and therefore ought to be utterly abrogate and aboliſhed.

Of the like nature are the deanes, archdeacones, chantours, ſubchantours, theſaurers, chancellors, and others having the like titles flowing from the pope and canon law onely, who have no place in the reformed kirk.

The kirks alſo which are united together, and joyned by annexation to their benefices, ought to be ſeparated and divided, and given to qualified miniſters, as God's word craves.

Neither ought ſuch abuſers of the kirks patrimony to have vote in parliament, nor ſit in councell under the name of the kirk and kirkmen, to the hurt and prejudice of the liberty thereof, and lawes of the realm made in favour of the reformed kirk.

Much leſſe is it lawfull, that any perſon amongſt theſe men ſhould have five, ſixteen, twenty or moe kirks, all craving the charge of ſoules, and bruike the patrimony thereof, either by admiſſion of the prince, or of the kirk, in this light of the Evangell. For it is but a mockage to crave reformation where ſuch like have place.

And in ſo farr, as in the order taken at Leith in the yeare of our Lord 1571, it appears that ſuch may be admitted, being found qualified; either that pretended order is againſt all good order, or elſe it muſt be underſtood not of them that be qualified in worldly affaires, or to ſerve in court, but ſuch as are qualified to teach God's word, having their lawfull admiſſion of the kirk.

As to biſhops, if the name επισκοπος be properly taken, they are all one with the miniſters, as before was declared. For it is not a name of ſuperioritie, and lordſhip, but of office and watching.

Yet becauſe in the corruption of the kirk, this name (as others) have been abuſed, and yet is likely to be, wee cannot allow the faſhion of theſe new choſen biſhops, neither of the chapiters that are electors of them to ſuch offices, as they are choſen unto.

True biſhops ſhould addict themſelves to a particular flock, which ſundry

ſundry of them refuſe, neither ſhould they uſurpe lordſhip over their brethren, and over the inheritance of Chriſt, as theſe men doe.

Paſtors, in ſo farr as they are paſtors, have not the office of viſitation of moe kirkes joyned to the paſtorſhip, without it be given to them.

It is a corruption, that biſhops ſhould have further bounds to viſit nor they may lawfully. No man ought to have the office of viſitation, but he that is lawfully choſen thereunto.

The elderſhips being well eſtabliſhed, have power to ſend out viſitours one or moe, with commiſſion to viſit the bounds within their elderſhip and likewiſe, after count taken of them, either continue them, or remove them from time to time, to the which elderſhips they ſhall be alwayes ſubject.

Criminall juriſdiction in the perſon of a paſtor is a corruption.

It agreeth not with the word of God, that biſhops ſhould be paſtors of paſtors, paſtors of many flockes, and yet without a certain flock, and without ordinary teaching.

It agreeth not with the ſcriptures, that they ſhould be exemed from the correction of their brethren, and diſcipline of the particular elderſhip of the kirk, where they ſhall ſerve, neither that they uſurpe the office of viſitation of other kirks, nor any other function beſides other miniſters, but ſo far as ſhall be committed to them by the kirk.

Wherefore, we deſire the biſhops that now are, either to agree to that order that God's word requires in them, as the generall kirk will preſcribe unto them, not paſſing their bounds, either in eccleſiaſticall or civill affaires, or elſe to be depoſed from all function in the kirk.

We denie not in the meane time, but miniſters may and ſhould aſſiſt their princes when they are required, in all things agreeable to the word, whether it be in councell or parliament, or otherwayes, providing alwayes they neither neglect their owne charges, nor through flattery of princes, hurt the publick eſtate of the kirk.

But generally, we ſay no perſon, under whatſoever title of the kirk; and ſpecially the abuſed titles in papiſtrie, of prelates, convents, and chapters, ought to attempt any act in the kirks name, either in councell, or parliament, or out of councell, having no commiſſion of the reformed kirk within this realme.

And by act of parliament it is provided, that the papiſticall kirk and juriſdiction ſhould have no place within the ſame, and no biſhop nor other prelate in times comming ſhould uſe any juriſdiction flowing from his authority.

And againe, that no other eccleſiaſticall juriſdiction ſhould be acknowledged within this realm, but that which is, and ſhall be in the reformed kirk, and flowing therfrom.

So we eſteem holding of chapiters in papiſticall manner, either in cathedrall

cathedrall kirks, Abbeyes, colledges, or other conventuall places, uſurping the name and authority of the kirk, to hurt the patrimony thereof, or uſe any other act to the prejudice of the ſame, ſince the yeare of our Lord 1560 yeares, to be abuſe and corruption, contrary to the liberty of the true kirk, and lawes of the realme, and therefore ought to be annulled, and in times comming utterly diſcharged.

The dependances alſo of the papiſticall juriſdiction are to be aboliſhed, of the which ſort is mingled juriſdiction of the commiſſars, in ſo farr as they meddle with eccleſiaſticall matters, and have no commiſſion of the kirk thereto, but were elected in time of our ſoveraigne's mother, when things were out of order. It is an abſurd thing that ſundry of them having no function of the kirk, ſhould be judges to miniſters, and depoſe them from their roomes. Therefore they either would be diſcharged to meddle with eccleſiaſticall matters, or it would be limited to them in what matters they might be judges, and not hurt the libertie of the kirk.

They alſo that of before were of the eccleſiaſtique eſtate in the pope's kirk, or that are admitted of new to the papiſticall titles, and now are tollerate by the lawes of the realme to poſſeſſe the twopart of their eccleſiaſticall rents, ought not have any further liberty, but to intromet with the portion aſſigned and granted to them for their life-times, and not under the abuſed titles which they had to diſpone the kirk rents, ſet tackes and fewes thereof at their pleaſure, to the great hurt of the kirk and poore labourers, that dwell upon the kirk lands, contrarie to all good conſcience and order.

CHAP. XII. *Certain ſpeciall heads of reformation which we crave.*

WHatſoever hath been ſpoken of the offices of the kirke, the ſeverall power of the office-bearers, their conjunct power alſo, and laſt of the patrimonie of the kirk, wee underſtand it to be the right reformation, which God craves at our hands, that the kirk be ordered according thereto, as with that order, which is moſt aggreeable to the word.

But becauſe ſomething would be touched in particular, concerning the eſtate of the countrey, and that which we principally ſeek to be reformed in the ſame, we have collected them in theſe heads following.

Seeing the whole countrey is divided in provinces, and thir provinces again are divided in pariſhes, as well in land-ward, as in townes; in every pariſh and reaſonable congregation there would be placed one or moe paſtors to feed the flock, and no paſtor or miniſter alwaies to be burdened with the particular charge of moe kirks or flockes then one alanerly,

And

And becauſe it will be thought hard to finde out paſtors or miniſters to all the paroch kirks of the realm, as well in landward, as in townes, we think by the advice of ſuch as commiſſion may be given to by the kirk and prince, pariſhes in landward or ſmall villages, may be joyned two or three or more, in ſome places, together, and the principall and moſt commodious kirks to ſtand, and be repaired ſufficiently, and qualified miniſters placed thereat; and the other kirks, which are not found neceſſary, may be ſuffered to decay, their kirk yards alwaies being kept for buryall places; and in ſome places where need requires a pariſh, where the congregation is over great for one kirk, may be divided in twa or moe.

Doctors would be appointed in univerſities, colledges, and in other places needfull, and ſufficiently provided for, to open up the meaning of the ſcriptures, and to have the charge of ſchooles, and teach the rudiments of religion.

As for elders, there would be ſome to be cenſurers of the manners of the people, one or moe in every congregation, but not an aſſembly of elders in every particular kirk, but onely in townes, and famous places, where reſort of men of judgement and abilitie to that effect may be had, where the elders of the particular kirks about may convene together, and have a common elderſhip, and aſſembly place among them, to treat of all things that concernes the congregations of which they have the overſight.

And as there ought to be men appointed to unite and divide the pariſhes, as neceſſity and commodity requires: ſo would there be appointed by the generall kirk, with aſſent of the prince, ſuch men as feare God, and know the eſtate of the countries, that were able to nominate and deſigne the places, where the particular elderſhips ſhould convene, taking conſideration of the dioceſſe, as they were divided of old, and of the eſtate of the countries, and provinces of the realme.

Likewiſe concerning provinciall and ſynodall aſſemblies conſideration were eaſie to be taken, how many and in what places they were to be holden, and how oft they ſhould convene, ought to be referred to the liberty of the generall kirk and order to be appointed therein.

The nationall aſſemblies of this countrey, called commonly the generall aſſemblies, ought alwayes to be reteined in their own liberty, and have their own place.

With power to the kirk to appoint times and places convenient for the ſame, and all men, as well magiſtrates as inferiours, to be ſubject to the judgement of the ſame in eccleſiaſticall cauſes, without any reclamation or appellation to any judge, civill or eccleſiaſticall within the realm.

The libertie of the election of perſons called to the eccleſiaſticall

functions, and obſerved without interruption, ſo long as the kirk was not corrupted by Antichriſt, we deſire to be reſtored and reteined within this realm.

So that none be intruſed upon any congregation, either by the prince, or any inferiour perſon, without lawfull election, and the aſſent of the people over whom the perſon is placed, as the practiſe of the apoſtolicall and primitive kirk, and good order craves.

And becauſe this order, which God's word craves, cannot ſtand with patronages and preſentation to benefices uſed in the Pope's kirk, we deſire all them, that truely feare God, earneſtly to conſider, that for as much as the names of patronages and benefices together with the effect thereof have flowed from the Pope, and corruption of the canon law onely, in ſo farr as thereby any perſon was intruſed or placed over kirkes having *curam animarum*.

And for as much as that manner of proceeding hath no ground in the word of God, but is contrary to the ſame, and to the ſaid liberty of election, they ought not now to have place in this light of reformation. And therefore, whoſoever will embrace God's word, and deſire the kingdome of his Son Chriſt Jeſus to be advanced, they will alſo embrace, and receive that policie and order which the word of God, and upright eſtate of his kirk craves, otherwiſe it is in vaine that they have profeſt the ſame.

Notwithſtanding as concerning other patronages of benefices that have not *curam animarum*, as they ſpeak: ſuch as are chaplenries, prebendaries founded upon temporall lands, annuels, and ſuch like, may be reſerved unto the ancient patrones, to diſpone hereupon, when they vaike, to ſchollers and burſers, as they are required by act of parliament.

As for the kirk rents in generall, we deſire that order be admitted and maintained amongſt us, that may ſtand with the ſincerity of God's word, and practiſe of the purity of the kirk of Chriſt.

To wit, that as was before ſpoken, the whole rent and patrimony of the kirk, excepting the ſmall patronages before mentioned, may be dicided in foure portions: one thereof to be aſſigned to the paſtor for his entertainment, and hoſpitality; an other to the elders, deacons and other officers of the kirk, ſuch as clerks of aſſemblies, takers up of the pſalmes, beadels and keepers of the kirk, ſo farre as is neceſſarie: joyning with them alſo the doctors, and ſchooles, to help the ancient foundations where need requires: the third portion to be beſtowed upon the poore members of the faithfull, and hoſpitals: the fourth for reparation of the kirks, and other extraordinary charges as are profitable for the kirk, and alſo for the common wealth, if need require.

We deſire therefore the eccleſiaſticall goods to be uplifted, and diſtributed

ſtributed faithfully to whom they appertaine, and that by the miniſterie of the deacons, to whoſe office properly the collection and diſtribution thereof belongs, that the poore may be anſwered of their portion thereof, and they of the miniſtery live without care and ſolitude: as alſo the reſt of the treaſurie of the kirk may be reſerved, and beſtowed to their right uſes.

If theſe deacons be elected with ſuch qualities as God's word craves to be in them, there is no feare that they ſhall abuſe themſelves in their office, as the profane collector did of before.

Yet becauſe this vocation appeares to many to be dangerous, let them be obliſhed, as they were of old, to the yearely count to the paſtors and elderſhip, and if the kirk and prince think expedient, let cautioners be obliſhed for their fidelity, that the kirk rents on na wayes be dilapidat.

And to the effect this order may take place, it is to be provided that all other intrometers with the kirk rent, collectors general or ſpeciall, whether it be by appointment of the prince, or otherwaies, may be denuded of further intromiſſion therewith and ſuffer the kirk rents in time comming to be wholly intrometted with by the miniſtry of the deacons, and diſtribute to the uſe before mentioned.

As alſo to the effect, that the eccleſiaſticall rents may ſuffice to theſe uſes, for the which they are to be appointed: we thinke it neceſſary to be deſired, that all alienations, ſetting of fewes, or tacks of the rents of the kirk, as well lands as teinds, in hurt and diminution of the old rentals, be reduced and annulled, and the patrimony of the kirk reſtored to the former old liberty.

And likewiſe that in times comming the tiends be ſet to none, but to the labourers of the ground, or elſe not ſet at all, as was agreed upon, and ſubſcribed by the nobility of before.

CHAP. XIII. *The utilitie that ſhall flow from this reformation to all Eſtates.*

SEing the end of this ſpirituall government and policie whereof we ſpeak, is, that God may be glorified, the kingdome of Jeſus Chriſt advanced, and all who are of his myſtical body, may live peaceable in conſcience: therefore we dare boldly affirme, that all theſe who have true reſpect to theſe ends will even for conſcience cauſe gladly agree and conforme themſelves to this order, and advance the ſame, ſo farre as lyeth in them, that their conſcience being ſet at reſt they may be repleniſhed with ſpirituall gladneſſe in giving full obedience to that which God's word, and the teſtimony of their own conſcience doth crave, and refuſing all corruption contrary to the ſame.

Next

Next, we ſhall become an example and patterne of good and godly order to other nations, countries, and kirkes profeſſing the ſame religion with us, that as they have glorified God in our continuing in the ſincerity of the word hitherto, without any errours, praiſe be to his name. So they may have the like occaſion in our converſation, when as we conforme ourſelves to that diſcipline, policie, and good order, which the ſame word, and purity of reformation craveth at our hands. Otherwiſe that fearfull ſentence may be juſtly ſaid to us, *The ſervant knowing the will of his maiſter, and not doing it, &c.*

Moreover, if we have any piety or reſpect to the poore members of Jeſus Chriſt, who ſo greatly increaſe and multiply amongſt us, we will not ſuffer them to be longer defrauded of that part of the patrimony of the kirk, which juſtly belongs unto them, and by this order, if it be duely put to execution, the burden of them ſhall be taken of us to our great comfort, the ſtreets ſhall be cleanſed of the cryings and murmurings of them, as we ſhall no more be any ſkandall to other nations as we have hitherto been for not taking order with the poore amongſt us, and cauſing the word which we profeſſe to be evill ſpoken of, giving occaſion of ſklander to the enemies, and offending the conſciences of the ſimple and godly.

Beſides this, it ſhall be a great eaſe and commodity to the whole common people, in relieving them of the building and upholding their kirks, in bigging of brigges and other like publique workes: to the labourers of the ground in payment of their teinds, and ſhortly in all theſe things, whereinto they have been hitherto rigorouſly handled by them that are falſly called kirkemen, their tackſmen, factours, chalmerlanes and extorſioners.

Finally, to the Kings majeſtie, and common wealth of the countrey this profite ſhall redound, that the other affaires of the kirk being ſufficiently provided, according to the diſtribution, of the which hath been ſpoken: the ſuperplus being collected in the treaſurie of the kirk may be profitably imployed, and liberally beſtowed upon the extraordinary ſupport of the affaires of the prince and common-wealth, and ſpecially of that part which is appointed for reparation of kirks.

So to conclude, all being willing to apply themſelves to this order, the people ſuffering themſelves to be ruled according thereto; the princes and magiſtrates not being exemed, and theſe that are placed in the eccleſiaſticall eſtate rightly ruling and governing, God ſhall be glorified, the kirk edified, and the bounds thereof inlarged, Chriſt Jeſus and his kingdome ſet up, Satan and his kingdome ſubverted, and God ſhall dwell in the midſt of us, to our comfort, through Jeſus Chriſt, who, together with the Father and the Holy Ghoſt, abides bleſſed in all eternity.

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The Want of DISCIPLINE ſhewn to be a great Cauſe of the preſent Corruption of Chriſtians.

Being a Chapter of a celebrated Treatiſe concerning the Cauſes of the preſent Corruption of Chriſtians, and the Remedies thereof *.

By the Reverend Mr Oſtervald, Profeſſor of Divinity, and one of the Miniſters of the Church at Neufchatel in Switzerland.

IT is not my deſign in this chapter to ſpeak of church-diſcipline in general; I ſhall only inſiſt upon that part of it, the end of which is to regulate the manners of Chriſtians; and this is an important matter. The want of diſcipline is one of the greateſt imperfections which have been obſerved in the preſent ſtate of the church, and one of the moſt evident and general cauſes of the corruption of Chriſtians. But becauſe ſome have pretended that diſcipline, was a human and arbitrary inſtitution, the obſervation of which was not abſolutely neceſſary, and might be dangerous, I think it proper to ſay ſomething here concerning the original, and the neceſſity of the diſcipline of the church.

It is certain, in the *firſt* place, That all ſocieties and bodies have a right to eſtabliſh an order to regulate themſelves by, and to provide for their ſecurity and preſervation. When ſeveral men or people unite to form a body, they have power to make laws and regulations, to which all the members of that body may be tied, and to exclude thoſe from their communion who will not ſubmit to them. But theſe

* This treatiſe was firſt publiſhed in French, and met with a very great and general applauſe. A ſecond edition of it was deſired in leſs than two months after the firſt; and it was ſoon tranſlated into more languages than one. This extract is taken from the third edition of it in Engliſh, printed at London 1711. Biſhop Burnet, to whom it is dedicated by the tranſlator, reckoned it among the beſt books that that age had produced; and that in all reſpects, both for piety and learning, good ſenſe and true judgement.

these laws ought not to clash with other laws already established, nor with just and acknowledged rights. I think, this power, which is granted to the meanest of societies, cannot be denied to the church; and this proves already that the church had a right to appoint a discipline, to which all her members should be subject, provided that discipline did not, on the one hand, prejudise public tranquillity, and the authority of the magistrates; nor any way contradict, on the other hand, the laws of the gospel. Now, as discipline is not liable to either of these inconveniencies, but does rather perfectly agree with the welfare of civil society, and the spirit of the Christian religion, as will be proved hereafter; so the establishing of it seems to be equally lawful and necessary.

But further, discipline is an order which has God for its author. We find the institution of it in holy scripture, and in the laws of Christ, and of his apostles; I shall recite the chief of these.

1. In Matthew's gospel, chap. xviii. 15. 16. 17. we read these words: "If thy brother shall trespass against thee, go and tell him "of his fault between thee and him alone: if he shall hear thee, "thou hast gained thy brother; but if he will not hear thee, then "take with thee one or two more, that in the mouth of two or three "witnesses every word may be established. And if he shall neglect "to hear them, tell it to the church; but if he neglect to hear the "church, let him be unto thee as a heathen man and a publican." It is true indeed, that our Saviour in these words properly speaks of private difference; but what he says ought to be applied to all those disorders which may happen in the church, and particularly to scandals. And surely it is evident, that if we may proceed in the methods here injoined, when the case is only concerning some differences between private men, we have much more right to do so with relation to public sins, since they are cases which concern the whole church, and that directly, and which do yet more properly belong to their cognisance, than the quarrels of private men. The meaning of Christ is then, that there must be an order in his church for the removing of scandals. He supposes, that the church has a right to interpose upon those occasions; and he commands that those who shall refuse to hear the church, be looked upon as if they were her members no longer, and that communication with them should be avoided. This is the import of these words: "Let him be unto thee as a heathen "man and a publican."

2. The fifth chapter of the first Epistle to the Corinthians, ver. 2. 3. 4. decides this matter. Paul having been informed, that there was a man among the Corinthians who lived in incest, he writes about it to that church; and, first, he reproves them "for not having cut off "from

" from their communion the perſon who had committed ſo infamous an action." In the next place, He does himſelf excommunicate that man, and deliver him up to Satan. I know, that perhaps this power of delivering up to Satan belonged only to the apoſtles; and it is likely, that this was one of thoſe extraordinary puniſhments which they had a power to inflict upon profane and rebellious perſons. But as for excommunication, it is the common and ordinary right of the church. This right, or rather this duty of the church, is clearly aſſerted by the cenſure which the Apoſtle addreſſes to the Corinthians; becauſe " they had not taken that inceſtuous perſon from among " them," and becauſe they had not obſerved the order he had given them before, not to ſuffer fornicators: " I wrote unto you already " not to company with fornicators;" ver. 9. He repeats this order in theſe words, which contain an expreſs and general law againſt all ſcandalous ſinners: " I write it unto you again, not to keep com- " pany; if any man that is called a brother, be a fornicator, or co- " vetous, or an idolater, or a railer, or a drunkard, or an extortion- " er, with ſuch an one, no, not to eat;" ver. 11. This is poſitive: and what the Apoſtle adds, " Do not ye judge them that are within?" is a confirmation that the church has a right to do ſo with relation to her members. Laſtly, He concludes with theſe words: " Therefore " put away from among yourſelves that wicked perſon;" ver. 13. for thus this verſe is to be rendered, as the drift of the whole chapter, of which this is the concluſion, ſhews it evidently. I deſire the force of this proof may be conſidered. It is not one ſingle paſſage which I here produce; it is a whole chapter; it is a thread of arguments, and of expreſs and reiterated injunctions. Paul deſcribes thoſe whom the church ought not to ſuffer in her boſom; he appoints what is to be done in reference to them; which is, that they ought to be cut off from the body of Chriſtians, and that their company is to be avoided. There cannot be a clear and expreſs law, if this is not ſo.

3. There are ſome other places which have no ambiguity in them, 2 Theſſ. iii. 6. " We command you, in the name of our Lord Je- " ſus Chriſt." This preface is remarkable; here is a law in due form, which the Apoſtle is going to deliver: he propoſes it by way of command, and he interpoſes the authority of our Lord Jeſus Chriſt; " We " command you, in the name of our Lord Jeſus Chriſt, that ye with- " draw yourſelves from every brother that walketh diſorderly, and " not after the tradition which he received of us." This law is repeated, ver. 14. " If any man obey not our word by this Epiſtle, " note that man, and have no company with him, that he may be a- " ſhamed."

4. The

4. The first Epistle to Timothy affords us proofs unanswerable. The design of Paul in this Epistle is to establish order and discipline in the church. To this purpose he gives several precepts to Timothy: he instructs him exactly how pastors ought to proceed about information, censures, and the principal offices of church government: "Rebuke not an elder, but instruct him as a father, and the young-"er men as brethren; the elder women as mothers, the younger "as sisters, with all purity;" chap. v. "Against an elder, re-"ceive not an accusation but before two or three witnesses: them "that sin rebuke before all, that others also may fear. I charge thee, "before God and the Lord Jesus Christ, and the elect Angels, that "thou observe these things, without preferring one before another, "doing nothing by partiality;" 1 Tim. v. 1. 2. 19. 20. 21. I might add other places out of this Epistle and the following, and out of that to Titus; Tit iii 10. Here is then again a whole thread of discourse, prescribing the order according to which the church is to be governed. Here are particular rules; and Paul uses an adjuration to oblige Timothy to observe them. These laws do not concern Timothy in particular, but Paul speaks here of the ministerial function, and of the duty of the pastors of the church in general. We need but read the Epistles to Timothy, and the beginning of that which he writes to Titus, to be satisfied, that he intends that this order should be settled in all the churches.

Either there is nothing plain in scripture, or it appears from all these places, that discipline is instituted of God; that the exercise of it is committed to pastors; that scandalous sinners are not to be tolerated in the church; that private men ought to avoid their company; and that the governors of the church are bound to proceed against them, by private and public censures, and even by excommunication. If the passages I have cited do not prove all this, we may wrangle about every thing, and all arguments from the sacred writings may be eluded. The institution of the sacraments is not more express or positive.

But though these places were not so positive and so clear as they are, yet we may be assured, that this is their true meaning, because this is the sense in which the whole primitive church understood them. The practice of the first ages, in conjunction with the laws of Christ and of his apostles, amounts to a demonstration, which cannot be withstood; besides, that we are to presume, that what has been practised from the foundation of the church, and in the time of her purity, was settled by the apostles themselves, or by apostolical men, so that we ought as much as possibly to conform ourselves to it. Now, we know, that discipline was observed in the primitive church, notwithstanding

withſtanding the unhappineſs of the times, and the perſecution This is unqueſtionable matter of fact, and therefore I ſhall take it for granted; and only ſay in ſhort, that then all thoſe who embraced Chriſtianity were engaged by a ſolemn vow to renounce the vices of the age, and to lead a holy life; that thoſe who were baptized were not ſuffered to live diſorderly; that vicious perſons were debarred the holy myſteries; that thoſe who fell into great ſins were excommunicated, as well as thoſe who were contumacious and incorrigible; that ſuch were not reſtored to the peace of the church, but after various profeſſions of repentance, and a public acknowledgement of their faults; and that as to thoſe who relapſed, they were received only at the hour of death. Very clear monuments of this practice are ſtill extant, in the writings of the ancient Doctors of the church, as well as in the old canons and decrees of councils. This diſcipline muſt needs have been very ſeverely obſerved, ſince Ambroſe was not afraid to put it in practice againſt the Emperor Theodoſius.

I am not ignorant, that the primitive church has varied about certain circumſtances, that the penitents were treated ſometimes with more and ſometimes with leſs ſeverity, and that the time of their ſuſpenſion from the ſealing ordinances of the church was longer or ſhorter: But as to the main, or the eſſence of diſcipline, it did always obtain in the primitive church. And it was as little queſtioned then, whether diſcipline ought to be obſerved, as whether Chriſtians ſhould be baptized. This uſage among the firſt Chriſtians is at leaſt a ſtrong preſumption in favour of diſcipline; but it being conſonant beſides to what we read in the New Teſtament, I do not ſee how there can remain any doubt about this matter.

In the laſt place, The nature of diſcipline itſelf proves the uſefulneſs and neceſſity of it. All thoſe who are not blinded with prejudice muſt own, that diſcipline, conſidered in itſelf, is altogether agreeable to the ſpirit of Chriſtianity. 1. The honour of religion, and the promoting of Chriſt's kingdom, require order in the church. Who does not ſee but, that if the church did tolerate ſcandalous perſons, and take them into her boſom, and make no difference between them and the faithful, ſhe might juſtly be charged with all the diſorders and ſcandals obſerved in the lives of bad Chriſtians, and be looked upon by infidels as a prophane ſociety, where vice is permitted? But the exerciſe of diſcipline is an authentic diſowning of vice, whereby the church declares publicly that ſhe does not allow of it.

2. Diſcipline is a moſt efficacious mean to procure the reformation of ſinners. A man muſt be very much hardened when the being removed from the communion of Chriſtians does not reclaim him. But

when a ſcandalous perſon is ſuffered to live in the ſociety of the faithful, when he is admitted to the ſame privileges with other members of the church, this gives him an occaſion to harden himſelf in ſin, and to think that he is as good a Chriſtian, and that he has as much intereſt in the privileges of the church as others: which is a moſt dangerous, but withal a moſt common imagination.

3. Diſcipline is uſeful to the church in general. Many who may otherwiſe have ill inclinations, are reſtrained by example, or ſhame, or fear, or even by conſcience: good men are thereby doubly edified; ſince, on the one hand, this rigour confirms them in their duty, and that, on the other hand, it makes reparation for the ſcandal which other mens ſins give them.

From all this, I conclude, that diſcipline is a ſacred, neceſſary, and inviolable order. It cannot be ſaid, that it is a human or arbitrary eſtabliſhment, which may be altered, or which was only to continue for a time. An order which has its original in the expreſs laws of Chriſt and his apoſtles, and is appointed in ſcripture as a general law; an order which has been obſerved in the primitive and apoſtolical church; an order which is founded on the very nature of the church and religion, and which perfectly agrees with the ſpirit of the goſpel: ſuch an order certainly ought to be followed, as being of a neceſſary and indiſpenſable obligation. I ſay it again, there is nothing more poſitive than this in the inſtitution of the ſacraments: diſcipline, as well as the ſacraments, is founded upon divine inſtitution, and confirmed by the practice of the primitive church. But in diſcipline there is one thing more than in the ſacraments: for whereas the ſacraments, conſidered in themſelves, and without reſpect to the divine inſtitutions, are things indifferent and of no uſe; diſcipline in itſelf is juſt and uſeful, agreeable to the principles of Chriſtianity, as well as to plain reaſon and ſenſe.

I have perhaps been too large upon this ſubject, but it was to be proved, in the firſt place, that diſcipline is neceſſary, and inſtituted by God, ſince that is the ground I go upon in this whole chapter.

This ſacred order, which had been ſettled in the beginning of Chriſtianity, was altered in proceſs of time; and in this, as in many other things, Chriſtians grew remiſs. This was done by degrees; for good laws are not commonly aboliſhed all at once, but through inſenſible changes. We learn from eccleſiaſtical hiſtory, that the ſlackning of diſcipline is chiefly to be imputed to the taking away ſome public cenſures. Thoſe cenſures were converted into private confeſſions and penances. At firſt this alteration was only concerning ſome ſins, which were not thought to deſerve the utmoſt rigour of diſcipline; for

for as to great ſins, ſuch as murder and adultery, the ancient order was ſtill in force. But at laſt, about the end of the fourth century, public cenſures were aboliſhed, firſt in the eaſtern, and ſometime after in the weſtern churches Inſtead of public cenſures, private ſatisfactions were appointed; and then men unhappily began to be more concerned about the exterior of church-cenſure, than about what is ſpiritual in it, and fit to reclaim ſinners. This was done at firſt by a kind of relaxation or indulgence; but that which at the beginning was no more than an exception to the law, ſucceeded in the room of the law itſelf: and from thence ſprang indulgences, ſatisfactions, confeſſions, auricular confeſſion, and many other practices, which are but corruptions of the ancient diſcipline. The biſhops, on the other hand, being diſtracted by temporal cares, after the converſion of the Emperors to the Chriſtian religion, began to neglect the eſſential parts of their function, and the conduct of their flocks. They were for humouring great men, who thought it hard to ſubmit to the public order. This is a ſhort account, how the purity of the Chriſtian religion was conſiderably adulterated in the point of diſcipline.

We are now to examine what the preſent ſtate of the church and religion is, with relation to diſcipline. All the abuſes which came up in the room of the ancient diſcipline, do ſtill ſubſiſt in moſt places, both in the Greek and in the Latin church. The canons and laws of the church in the firſt centuries have been abrogated by contrary laws and canons. This is acknowledged by all men of learning and ſincerity.

Let us ſee then whether this diſcipline is to be found any where elſe. There are many churches in the laſt age, which did redreſs thoſe abuſes I now mentioned. But they ought to have gone further; as theſe abuſes had ſucceeded in the room of apoſtolical diſcipline, ſo that too ſhould have been reſtored, when theſe were taken away. But this was not done as it might have been wiſhed. The diſorder was removed, but order was not re-eſtabliſhed; and it is not hard to apprehend how this came to paſs.

It is no wonder that thoſe abuſes ſhould be taken away: they were grown too intolerable; and they could not hold out againſt the learning of an age more knowing than the former were. Things were gone ſo far, that a turn and a revolution were neceſſary. It is very probable beſides, that intereſt, pride, or ambition, did move great numbers of perſons, who, after all, had not much piety to ſet themſelves againſt thoſe many and great diſorders, and to ſhake off a yoke under which the Chriſtian world then groaned. But the ſame principles hindred their ſubmitting to the yoke of Chriſt, and binding themſelves

ſelves to the obſervation of evangelical diſcipline. We are to conſider further, that the rules of diſcipline and public confeſſion had been diſuſed for ſeveral hundred years, ſo that it was not eaſy to bring the world to ſubmit to an order, of which the notion was loſt. Policy had perhaps a large ſhare likewiſe in this revolution. Princes and great men were eaſily determined, to pull down the exceſſive and uſurped authority of the clergy; but they did not at all expreſs the ſame zeal to reſtore to the church her lawful authority. In fine, among divines themſelves, there were many who could not endure that diſcipline ſhould be named, and who diſputed and writ againſt thoſe who were for excluding ſcandalous perſons from the holy ſacrament, and for making uſe of excommunication and public confeſſions. In ſuch circumſtances, the reſtoring of diſcipline was a hard taſk. It will not be improper to relate here concerning this matter, the opinions and the very words of thoſe who were then employed about the reformation of the church.

They looked upon diſcipline as a capital point to reſtore religion to its purity. They wrote, "That diſcipline was the beſt, nay the "only mean to keep the people in obedience; that the church would "never ſtand upon a firm and ſolid foundation, till diſcipline and ex-"communication were uſed to purge it, to give a ſtop to licentiouſ-"neſs, to baniſh vice, and to mend manners; and that whoſoever "rejected the lawful and moderate uſe of excommunication, ſhewed "himſelf to be none of Chriſt's ſheep*".

But we likewiſe obſerve in their writings, that they had the ill fortune of not being able to ſucceed in their deſign: they ſay openly, that they met on all hands with inſuperable obſtacles: "That there "was a company of miniſters, who preached a goſpel without diſci-"pline, and who even queſtioned, whether the uſe of diſcipline was "to be brought back into the church: that ſome introduced licenti-"ouſneſs inſtead of Chriſtian liberty, and thought that to reject the "Pope was enough in order to be truly evangelical; that others obſer-"ving the daily decay of Chriſtianity, wiſhed that the authority of the "miniſtry might be reſtored; but that either they did not ſee the true "way of bringing this about, or that if they ſaw it, they deſpaired of "ſucceſs:

* *Calvini Epiſt. et Reſponſa, p.* 327. Diſciplinam jure vocare poſſumus optimum, atque adeo unicum retinendæ obedientiæ vinculum. *Et paulo poſt:* Itaque eccleſias noſtras tum demum rite ſuffultas arbitrabor, ubi iſto nervo colligatæ fuerint. *Et p.* 336. Cæterum non aliter conſiſtet eccleſiæ incolumitas quam ſi ad eam purgandam, frænandas libidines, tollenda flagitia, corrigendos perverſos mores, vigeat excommunicatio, cujus moderatum uſum quiſquis recuſat, præſertim admonitus, ſe ex Chriſti ovibus non eſſe prodit.

" ſucceſs: that thoſe who endeavoured to revive diſcipline were cal-
" led tyrants, who would have uſurped the liberty of the church:
" that the people had ſhaken off all reſtraint, and were accuſtomed to
" licentiouſneſs; as if, by taking away the Pope's authority, the mini-
" ſtry had been deſtroyed, and the word of God and the ſacraments
" had loſt their efficacy*." They have ſaid, that the want of diſ-
cipline did produce corruption: " That becauſe there were nei-
" ther cenſures, nor corrections, nor public confeſſions, nor excom-
" munications in the church, even for the greateſt crimes, the
" people and youth did commit all manner of ſins; that no perſon
" was reſtrained by ſhame, and that men became proud, and altoge-
" ther impenitent: that if the more flagrant ſcandals were removed by
" public ſatisfaction, as Paul enjoins, and as it was anciently practiſed,
" there would be leſs corruption and more zeal in the church †."

Theſe were the ſentiments of many Doctors in the laſt age: they ſaw that the want of order and diſcipline was going to bring libertiniſm into the church. But yet their endeavours were not altogether uſeleſs. Some churches drew conſiderably nearer to the apoſtolical inſtitution; and there are ſome where diſcipline is not yet quite aboliſhed:

* *Capit. in Calv. Epiſt. p.* 7. Peritiores rerum eccleſiaſticarum, cernunt in cauſa (ejectionis veſtræ) fuiſſe totam cohortem miniſtrorum evangelium docentium ſine diſciplina, imo ne ſcientium an diſciplina ſit in eccleſiam revocanda. Otioſam enim functionem quidam tueri malunt, quam fructuoſam: quidam licentiam pro Chriſti libertate induxerunt, quaſi ab evangelio ſtent, qui jugum pontificum abjecerint. Aliqui vero id eſt, plerique omnes, animadvertentes rem Chriſti indies abire in pejus optarent quidem reſtitutam auctoritatem miniſtrorum, ſed aut veram ejus reparandæ rationem ignorant, aut eam videntes deſperant prorſus. *Et paulo poſt:* Auditis enim tyranni eſſe voluiſtis in liberam eccleſiam, voluiſtis novum pontificatum revocare, atque id genus contumeliarum, *&c.* *Et paulo poſt:* Nam frænum prorſus excuſſit multitudo, quæ aſſueta eſt et educata propemodum ad licentiam, quaſi authoritatem pontificiorum frangendo, vim verbi, ſacramentorum, et totius evangelii evacuaremus, *&c.*

† Bucerus de animarum cura, p. 171. Et quis negare poteſt, cum omnium Peccatorum, quam atrocia etiam illa ſint, adeo nulla increpatio, caſtigatio aut pœnitentia eſt in eccleſia, hinc fieri ut juventus et plebs eo leviores reddantur ad omne malum. Pudor et dedecus abeunt, homines efferuntur, reddunturque (ut Paulus conqueritur) omnino impœnitentes, dedunt ſe libidini, omnique vanitati, denique vita eſt petulanti atque perdita ſatiari nullo modo poſſunt.

Idem, p. 189. Si craſſiora delicta ſeveriore pœnitentia compenſarentur, ut ſanctus docet apoſtolus, utque in ſancto atque ſalutari uſu fuit in eccleſiis veteribus bene conſtitutis: major inde apud omnes Dei Filios peccatorum fuga et deteſtatio, majorque vitæ Chriſtianæ Zelus exiſteret, quam proh dolor! hodie apud nos deprehendimus. Vide et Buceri Epiſtolam ad Calvinum, in Epiſtol. Calvini, p. 370, 371.

boliſhed: they ſtill make uſe of ſome part of thoſe means preſcribed by the goſpel for the correction of manners: they do not admit all perſons indifferently to the ſacrament: they retain the uſe of public ſatisfaction, and even in ſome places of excommunication. But yet there are ſtill many things wanting in the order and government of thoſe churches, as will appear by comparing their preſent practice with that of the primitive church, and with the canons of the ancient diſcipline. I do not pretend, that in this matter the practice of the firſt Chriſtians ought to be copied in every thing, but certainly in many points we ought to conform to it.

If we examine in what manner diſcipline is adminiſtered now a-days, we may obſerve ſeveral defects in it which are very conſiderable. For inſtance, we ſhall find churches where excommunication is uſed about matters of no great importance; where that which is called excommunication, is rather a civil ſentence or puniſhment, than an eccleſiaſtical cenſure; and where, not the paſtors of the church, but civil judges excommunicate. Another common fault is, that diſcipline is exerciſed only upon two or three ſorts of ſinners: Fornicators and notorious blaſphemers are indeed ſeverely proceeded againſt, but a great many perſons are ſuffered in the church, who have nothing of Chriſtianity in their deportment; ſuch as drunkards, idle people, and ſeveral other ſinners; whom the divine laws ſubject as much to the rigour of diſcipline, as adulterers. It would be altogether neceſſary to uſe diſcipline againſt thoſe who enter into marriage only to conceal their ſhame, and yet in moſt churches no ſatisfaction is demanded of ſuch people: This is a matter of very great moment. There is no ſufficient care taken, to be ſatisfied about the ſincerity of ſinners repentance when they are to be reſtored to the peace of the church. The apoſtolical precept about avoiding all familiar intercourſe with ſcandalous ſinners is out of uſe. By all this we may ſee that few churches can boaſt of a pure diſcipline. But ſuppoſing that true diſcipline might be found in ſome places, yet how many defects do creep into the beſt conſtituted churches, either through the ſtubbornneſs of ſinners, the oppoſition of corrupt magiſtrates, or the fault and careleſſneſs of paſtors? The beſt laws are good for nothing when not obſerved: ſo that whether thoſe who ought to exerciſe diſcipline for the giving a ſtop to ſcandals, do it not, or whether they have not the power to do it, it is ſtill true that corruption proceeds from the want of diſcipline.

What muſt we ſay then of thoſe churches where diſcipline is wholly unknown? where neither church nor paſtors have any authority to govern or inſpect; where miniſters dare not exclude any one from the

the ſacrament, but admit all perſons indifferently to the holy communion; which abuſe would have been thought an unheard-of profanation in the primitive church; and where all public cenſures are out of doors? I ſay nothing of excommunication; if any man ſhould propoſe the reſtoring of it, his deſign would be looked upon in many places as an unpardonable crime; and the ſtrangeſt thing of all is, that this want of diſcipline is to be found in churches, which acknowledge the ſcripture for the rule of religion; and that there are divines, who, inſtead of promoting the re-eſtabliſhment of diſcipline, oppoſe it, and maintain, that none are to be debarred from the ſacrament; who cannot endure the very name of excommunication, and who pretend, that where the magiſtrate puniſhes vice, there is no need of any other diſcipline. Thoſe divines have not the greater number on their ſide, but their opinion prevails, becauſe it favours policy and licentiouſneſs.

We are to impute to this fatal remiſſneſs, the looſeneſs and irregularity of the manners of Chriſtians. I need not inſiſt more upon this, for every one is ſenſible of it. Good order keeps men in duty; but where there is no order, vice muſt of neceſſity bear ſway. What ſhould reſtrain people? excepting ſome general admonitions which are delivered in ſermons, every perſon is left to himſelf, and lives as he thinks fit. Private men are not bound to give an account of their conduct to any body. Thoſe who lead the moſt unchriſtian life, ſwearers, covetous, profane, leud, and intemperate perſons, all ſorts of people, live peaceably in the church: they are reputed members of it, they are mingled among true Chriſtians, they enjoy with them the ſame ſpiritual privileges, at leaſt in all outward appearance, and they are admitted to the ſame ſacraments. As long as things are in this ſtate, we muſt not hope to ſee any abatement of corruption.

But that nothing may be omitted which may contribute to the clearing of this matter, it is neceſſary to anſwer ſome objections, and that which is alledged to excuſe, or even to juſtify the taking away of the ancient diſcipline.

1. Againſt the reſtoring of diſcipline, ſome ſay, (which was objected in the laſt age), "That it is ſufficient for the edification of the "church, that the goſpel ſhould be preached in it; ſince that is the "ordinary means which God has appointed to procure the conver-"ſion and the ſalvation of men." The goſpel no doubt is ſufficient to teach us all that is neceſſary to be known in religion; but it is not true that God makes uſe only of the preaching of the goſpel for the ſalvation of men: for he uſes other means beſides, as for inſtance, the ſacraments; and thoſe means, among which diſcipline is to be reckoned, are preſcribed by the goſpel itſelf; ſo that whoſoever ſubmits to the

the gospel, must likewise submit to that order we speak of. Preaching is, without dispute, a part of the office of pastors: but it is a great mistake to think that God has appointed them only to preach; for they are intrusted besides with the government of the church, and this part of their employment is at least as essential as preaching. It is remarkable, that the scripture speaks of pastors in divers places: and that the titles it gives them, and the functions it ascribes to them, relate chiefly to the government of the church. This is implied in the name of bishops, priests, or elders, guides and pastors. Paul has writ concerning the duties of the ministry: if we examine what he says of the functions of that charge, and of the qualifications of those who are to be admitted into it, we shall find that he is much larger upon the government of the church than upon preaching. To this purpose the Epistles to Timothy and Titus may be consulted.

But further, all churchmen are not called to preaching. The apostles distinguish their functions; they tell us, "That all are not "Doctors, that all do not interpret, that all do not administer the word, "that all do not teach and exhort; that some are appointed to instruct, "to exhort, and to expound the scriptures, others to govern, and "others to do works of charity; See 1 Cor. xii. 4. 5. 6. 28. 29. 30. Acts vi. 2, &c. Rom. xii. 6, 7, 8. 1 Tim. v. 17. Though we should suppose that there is nothing in this which relates to the extraordinary gifts conferred upon the first ministers of the gospel, and to the order which was then observed; yet it is plain that these places are to be understood of the gifts and functions of ordinary pastors.

This is confirmed by the practice of the primitive church. The principal and the most general function of pastors then was, the inspection and governing of the church. Preaching was not neglected, but all churchmen were not preachers; this province was committed to those who were fit for it. Would to God this distinction was still observed! the church would be better governed, and the gospel better preached than it is. There are talents requisite to preach the gospel, which every body has not, and others are necessary for the conduct of the church; and all these gifts seldom meet in one person. If then no regard is had to different gifts and functions, if, without distinction, every thing is committed to one person, it is visible that the church will be ill edified. But further, the gospel barely preached and known is not sufficient to salvation; nothing but obeying the gospel can save a man, or believing the glad tidings of it, for ourselves in particular, whereby it becomes the power of God for our salvation; and it is to little purpose to preach it, if the manners of Christians are not regulated, and if discipline is not used to that end, as a mean appointed of God.

2. Those

2. Thoſe who are for myſtical devotion and piety will certainly ſay, "That diſcipline is not eſſential to religion; that it is a matter "of external order; and that external things are uſeful only to car- "nal and imperfect Chriſtians" But I deſire thoſe who have ſuch opinions to ſpeak more reverently of an order of which God is the author, and which the apoſtles have ſo expreſsly recommended. It cannot be thought that the apoſtles, who did aboliſh the Moſaical ceremonies, would at the ſame time have burdened the church with needleſs laws; or that they would have interpoſed Chriſt's authority, for the obſervation of an order which had not been neceſſary. They are deſired to conſider beſides, that men have bodies as well as ſouls; that among a great multitude, there are many perſons of a groſs underſtanding, who cannot be reſtrained but by external laws; and that it is abſurd to pretend that men can be ſo ſpiritualized, as to need no longer outward aids to piety. But it is a groſs error to look upon diſcipline, as an order purely external: for, properly ſpeaking, it is an order altogether ſpiritual. Diſcipline does not touch either mens bodies or their eſtates, it uſes only ſpiritual means; and it is efficacious no farther than as it operates upon the heart and conſcience.

3. But others will caſt the objection I have now confuted into this form; they will ſay: "That in external things, among which diſcipline "is to be ranked, churches are at liberty to regulate themſelves as "they think good." I grant that churches have that liberty in indifferent things, which are not appointed by a divine authority; but this cannot be applied to the matter in hand. An eſtabliſhment of divine inſtitution cannot be reckoned among things indifferent. Do we look upon the ſacraments as indifferent ceremonies, which we are not bound to obſerve, under pretence that they are but external rites and ordinances? Churches indeed have a liberty where there is no law, though ſtill that liberty is to be wiſely and diſcreetly uſed, for fear of confuſion: but when God has ſettled an order, churches are not at liberty to chuſe another, to make new laws, and to ſet up a new form of government. Such a liberty would be mere unrulineſs, and a criminal and ſacrilegious preſumption. This would be the way to multiply ſects and religions to a degree impoſſible to be aſcertained.

4. The ſame anſwer may ſerve to refute ſuch who, to juſtify the practice of thoſe churches which do not obſerve the form of diſcipline uſed in the primitive church, make a diſtinction between diſcipline and the manner of exerciſing it. They own, "That diſcipline is neceſ- "ſary, and that there ought to be order in the church: but they think "that the way of exerciſing diſcipline may vary, according to time, "place, and other circumſtances." This diſtinction may be received,

when the case is only about some indifferent circumstances; but it is alledged without reason, when the question is concerning the substance or the essence of the thing itself: The disorder we complain of is, that what is essential in discipline has been taken away, to substitute in lieu of it another order, and set up a new discipline of which the apostles did not speak a word. Now, that which is most essential in discipline, and which is not observed in most churches, is this, that scandalous sinners are not to be suffered in the church; and yet they are suffered: that they are to be warned and reproved in private, and even in public; this is seldom done, and in some places never done: that Christians ought to separate themselves from those who live disorderly; and this is not observed: that upon certain occasions, they are to be cut off from the body of the faithful; but pastors dare not so much as mention this: that the administration of discipline belongs to pastors; that they ought to preside, proceed, and judge in all emergent cases. The scripture gives them that right, and ascribes to them those offices; but they have been divested of them; new political bodies have been erected, in which there is but one churchman or two, for form's sake, who often have neither vote nor authority in them. It is of divine right that sinners should give real proofs of their repentance; as, for instance, by making restitution, by reconciliations, by acknowledging their fault: but this is not now required of them; nay, in some churches it is not so much as inquired into. It is against all the laws of discipline, that none should be excluded the holy communion, and yet in most places this is not regarded. Lastly, It is an apostolical order and practice, that sinners should be received to the peace of the church, but it is after they have shewed themselves fit for it, by a sincere, and if the case requires, by a public repentance; but now a-days those ancient rules of discipline are abolished.

After all this, can it be said that no alteration has happened in the essence of discipline, but only in the manner of it? censures, suspensions, excommunication, and the authority of pastors are taken away; the government appointed by the scripture is overturned; another and quite different form is brought into the room of it; and yet people will say, That the question is not about the thing itself, but the manner. It is not sufficient to have any kind of order; the order which God has prescribed, and no other, ought to be observed. Some circumstances may be varied according to the necessities of churches, but the substance of the thing itself is unalterable.

5. Many are of opinion, That the authority of the magistrate supplies the want of discipline, and that this way is by much preferable to the other. I confess, that the punishments inflicted by the magistrate

ſtrate upon ſcandalous livers are of great uſe; that magiſtrates who uſe their authority to ſuppreſs vice are very commendable; and that diſcipline is of much greater force, when ſupported by the authority of civil powers. But ſtill the divine inſtitution is to be preſerved entire; it does neither belong to the magiſtrate, nor to any power, to alter that which God has commanded, and to deprive the church of her right. After all, the diſcipline of the magiſtrate is not the diſcipline of the church; theſe are two diſtinct things, and of a quite different nature. The magiſtrate uſes external and corporal puniſhments; fines, impriſonments, baniſhments, force, &c. Theſe methods are certainly uſeful; they may terrify ſinners, and in ſome reſpects keep them in awe and duty: but beſides this, it is neceſſary to work upon the heart, and to bind the conſcience by thoſe methods which diſcipline uſes; or elſe it is to be feared, that we ſhall only make hypocrites, and that men will abſtain from evil more out of the fear of puniſhment, and upon temporal conſiderations, than from motives of conſcience.

Nay, there are people, who, if they had nothing to fear but a fine, or ſome days impriſonment, would gladly purchaſe at that rate the liberty of ſinning; and fancy that, provided ſatisfaction be made to the magiſtrate, there is no more to be done for the clearing of their conſcience. Beſides, what a diſorderly thing is it, that an offender who is proſecuted, fined, and impriſoned by the magiſtrate, ſhould ſtill be treated like a member of the church, and admitted to the holy ſacrament? The magiſtrate's authority is therefore a very efficacious mean to promote the glory of God, when it is joined with eccleſiaſtical diſcipline: but to think that civil laws are ſufficient to regulate manners, and to reclaim ſinners, is a conceit almoſt as unreaſonable, as it would be ridiculous to proceed againſt robbers, or the other diſturbers of the public peace, only by ſpiritual puniſhments. Let no man then confound thoſe things which God has ſet aſunder

6. It is farther ſaid, "That theſe rules of diſcipline were only "for a time; and that the times are altered." But how can it be proved, that the laws of diſcipline were made only for a time? is there any ground for this, either in the ſcripture or in the nature of thoſe laws? are the laws of diſcipline like thoſe of Moſes, which do no longer bind us? did the apoſtles make this diſtinction? did Paul ſay upon this ſubject, as he did in another caſe, "I only give my judgement; I have no commandment of the Lord?" 1 Cor. vii. Does he not ſpeak poſitively of the order according to which the church is to be governed? does he not command in the name of Jeſus Chriſt? does he not eſtabliſh general laws and maxims for all the churches? The apoſtles indeed appointed ſome rules; the obſervation of which is not neceſſary at this day, becauſe thoſe regula-

tions were visibly founded upon particular reasons which do no longer subsist; and therefore they are not proposed as general laws. But the reasons upon which discipline is founded, and which are taken from order and edification, from the honour of the church, from the reformation of sinners, and from the nature of the Christian religion, those reasons do still subsist; and consequently the rules of discipline are sacred and inviolable, especially being delivered by way of command, and repeated in so many places. The Christian church is to be diffused all the world over; sometimes she is persecuted, and sometimes she enjoiys a calm: but whatever state she may be in, her nature does not alter. As there is but one God, one church, one faith, one baptism, so there is to be but one order, at least as to essential things; and that order ought to be conformable to the laws of the apostles. Or else there will be, as in fact we see there are, as many different customs and disciplines, as there are kingdoms, states, provinces, nay towns and churches.

7. It is commonly objected, "That the zeal of the primitive "Christians is extinct; that men are now very corrupt; and that it "would be impossible to bring them to a submission to the discipline "of the church." But that very thing that men are corrupt, proves the necessity of discipline. Order is never more necessary than when all is in confusion. Paul says, "That the law is not made for a righ-"teous man, but for the lawless and disobedient" 1 Tim i. 9 Discipline seems more necessary now, than it was in the first centuries: because then persecution kept corruption out of the church: but when the church is in peace, vices and scandals do infallibly multiply; and then it is that good discipline is of excellent use.

But then it is said, "That it would be impossible to restore it, con-"sidering the disposition men are now in." I confess this design would meet with opposition. Those who go about to restore order and suppress licentiousness, must still encounter difficulties; but yet this might be compassed, if princes and magistrates did not oppose it. If all the pastors did set about it, with a zeal, accompanied with prudence and gentleness; if they did carefully instruct the people concerning the necessity of discipline; and if they did apply themselves to the civil powers with equal vigour and respect, they would carry the point at last. After all, the people are not in a worse disposition than the Heathens were in before the apostles preached the gospel to them; and there are Christian princes and magistrates who have piety and zeal. If then the Heathens of old could be brought under the discipline of Christ, in the sight of Heathen magistrates, should we despair of subjecting Christians to it? The instance of those churches where

where discipline is observed, at least in part, and where excommunication and public satisfactions are in use, shews, that there is no impossibility to succeed in this design. If the thing was impossible, God would never have commanded it.

8. In the last place, Here is an objection which is commonly urged with great force, and which seems to have much weight in it. It is said, "That we have reason to fear that discipline would bring tyranny into the church; and that those who govern it, would then "assume too much authority." Let us see whether this fear be well grounded.

And first, If we suppose this principle, that discipline is instituted of God, and that the apostles committed it to the church and her governors, which I think has been fully demonstrated, will it no be a kind of blasphemy, to say, That discipline is not to be suffered, lest pastors should become tyrants? would not this reflect upon our Saviour and his apostles, as if they had established a dangerous order, which is apt to introduce tyranny? At this rate the apostles and the primitive Christians did incroach upon the liberty of the people, and the authority of princes. Every Christian will abhor this consequence; and yet it results naturally from the opinion of those who reject discipline for fear of tyranny. Besides, supposing that Christ has instituted the order we speak of, can we thus argue against it, without shaking off his yoke? But men do not consider this. They fancy that every thing that is granted to the church is granted to her governors; whereas they should remember that it is paid or yielded to Christ, whose right it is, and who cannot be despoiled of it without sacrilege Here we might retort the charge upon those who bring it. They talk of tyranny; and is it not an intolerable piece of tyranny, to oppose a divine law, and to debar the church and her governors of the enjoyment of those rights which God has given them?

But to come closer to the objection: Nothing can be feared but one of these two inconveniencies, either an empire over consciences, or some prejudice to the public tranquillity, and to the authority of civil powers.

As to the first of these two inconveniencies, there is no great reason to fear it, since the apostles, who so expressly recommend discipline to pastors, forbid them at the same time to assume a dominion over consciences, provided discipline is used only in those cases, and in that manner which the scripture appoints, and as it was practised by the first Christians; 1 Pet. v. 2.; 2 Cor. i. 24. Nothing like this is to be feared from it. As to those cases which concern manners, in-

justice

juſtice can hardly be committed about them. The church does not judge of ſecret and unknown facts. She only proceeds againſt notoriouſly ſcandalous and impenitent ſinners, and ſhe receives them as ſoon as they expreſs their repentance; and is there any thing of tyranny or danger in this? It is proper to obſerve here, eſpecially with reference to excommunication, which is thought the ſevereſt part of diſcipline, that when the church proceeds to that extremity, ſhe does not, properly ſpeaking, act by way of authority, as if ſhe had an abſolute power to puniſh a ſinner, and to cut him off from her body: but that ſinner has already by his life cut himſelf off from the communion of Chriſt; he is no longer a member of the church; ſo that the church only declares, that which is done and determined already, though ſhe ſhould not declare it.

Neither is there any cauſe to fear that the public peace ſhould be diſturbed by the exerciſe of diſcipline. On the contrary, ſociety will be the better regulated for it. For diſcipline does not touch civil matters. Excommunication itſelf does not hinder a man from being ſtill a member of the commonwealth, nor that all the duties of juſtice and humanity ſhould be diſcharged towards him.

As for the authority of civil powers, it is no wiſe injured by this, as evidently appears from the firſt Chriſtians exerciſing diſcipline openly in the ſight of the Heathen magiſtrates, without any oppoſition from them. Chriſt did not come into the world to erect a temporal kingdom, nor to draw men off from their ſubmiſſion to the authority of kings and magiſtrates. It is the principle of a true Chriſtian, "to "render unto Cæſar the things which are Cæſar's, and to God the "things which are God's;" Matt xxii. 21. This principle will not deceive a man; and as long as we adhere to it, all things will be in order. Religion is ſo far from giving any juſt umbrage to princes, that, on the contrary, it ſtrengthens their authority. Submiſſion to the higher powers is recommended by the apoſtles in the moſt earneſt manner. The Chriſtians of the firſt ages, who were very ſtrict obſervers of diſcipline, diſtinguiſhed themſelves by their loyalty to princes. Nay, it is obſervable, that their diſcipline which was ſo ſevere againſt ſinners, was as ſtrict againſt thoſe who were wanting in the fidelity and reſpect due to ſuperiors; witneſs that canon, which enjoins the depoſition of thoſe biſhops and clergymen who ſhould offer an affront to the prince or his officers.

Whoever will take the pains to weigh this matter, will acknowledge that diſcipline is a diſtinct thing from the civil power. Each of theſe has its bounds and limits. The church does not touch the body nor civil matters, and it is not the magiſtrate's buſineſs, to regulate

late things relating to conſcience and ſalvation. Indeed, if magiſtrates imagine that they have a right to govern the church as they think fit, and that they hold the ſame rank in it which they hold in the civil ſociety, ſo that the miniſters of religion are but their officers, diſcipline may ſeem to them to leſſen their authority: but let thoſe who entertain ſuch thoughts, ſee how they can reconcile them with the goſpel, and with the nature of the Chriſtian religion.

Notwithſtanding all this, it will be ſaid, That churchmen have been known to uſurp a dominion over conſciences, and over kings. It is true, churchmen have abuſed their authority; but becauſe a thing has been abuſed, is it therefore to be aboliſhed? wiſe men will rather ſay, That things ought to be reſtored to their natural ſtate, and to their lawful uſe; elſe the whole authority of kings and magiſtrates might be pulled down: and we might argue thus, monarchical government is liable to great inconveniencies, kings have been tyrants and uſurpers, therefore there muſt be no more kings; magiſtrates and judges have been unjuſt, covetous, cruel; and therefore no magiſtrates are to be endured. Would not this argument be extravagant and impious? and yet the like argument is uſed againſt diſcipline. In church, as well as in ſtate government, there will be always ſome inconveniency to be feared; this evil is almoſt unavoidable, there being no form of government which the malice of men may not abuſe: but thoſe abuſes are, without compariſon, a leſs evil than anarchy, which is the moſt dangerous ſtate of all.

But let us clear the matter of fact upon which the objection I am now confuting is founded: It is ſuppoſed, that diſcipline did introduce tyranny; but, on the contrary, it was upon the ruins of diſcipline that tyranny was erected. This is known to all thoſe who have any knowledge of antiquity. When did biſhops and clergymen uſurp that exceſſive authority over mens eſtates, perſons, and conſciences? It was when the obſervation of the ancient diſcipline was ſlackened; when diſcipline began to wear out of uſe; when ſinners, and eſpecially great men, were exempted for money; when that which ſhould have been tranſacted by the whole church was referred only to the clergy; and when public confeſſion was changed into a private one. It was by theſe means, and not by the due exerciſe of diſcipline, that churchmen made themſelves maſters of all.

What we ought to do then is this, firſt, to enquire what is of divine inſtitution in diſcipline, and to reſtore that; in the next place, to conſider what the reformation of ſinners, and the honour of the church require, and what was good and edifying in the practice of the primitive church, in order to conform to it; and, laſtly, to provide, by good

good laws, that no man may exceed the bounds of his calling; particularly, that in reſtoring to the clergy their lawful authority, all juſt meaſures be taken to prevent their abuſing it. If Chriſtian princes are bound to preſerve the rights of the church, they ought likewiſe to take care that nothing be done againſt their own authority, and to puniſh thoſe who oppoſe it, or who diſturb the civil ſociety, whether eccleſiaſtics or laymen.

Beſides, when we ſpeak for the re-eſtabliſhment of diſcipline, we mean, that paſtors ſhould be ſubjected to it as well as their flocks; and that if there is an order in the church to regulate the manners of Chriſtians, there ſhould be one alſo to regulate the clergy, and to lay ſtrict obligations on them to diſcharge their duty in all its parts; and that, according to the ancient practice, diſcipline ought to be more ſevere againſt the eccleſiaſtics, who fail in their office, than againſt the people.

I conclude with ſaying, that, in order to remedy the corruption of manners among Chriſtians, it is abſolutely neceſſary to reſtore the uſe of diſcipline. This is what has been, and is ſtill heartily wiſhed for by many perſons of eminent learning and piety; and it is that which I deſire all thoſe who have a zeal for the glory of God, to take into their ſerious conſideration.

FINIS.

Rev^d Mr. Dobbin B.
in Calf and Letter'd